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TAXPAYERS' BILL OF RIGHTS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 579 and S. 604

APRIL 10 and 21, 1987

Part 1 of 2

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TAXPAYERS' BILL OF RIGHTS

FRIDAY, APRIL 10, 1987

U.S. SENATE,
SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS
AND IRS OVERSIGHT, COMMITTEE ON FINANCE,
Washington, DC.

The committee was convened, pursuant to notice, at 9:05 a.m. in Room SD-215, Dirksen Senate Office Building, the Honorable David Pryor (chairman) presiding.

Present: Senators Pryor and Armstrong.

[The press release announcing the hearing, the prepared statement of Senator Pryor and a background paper by the Joint Committee on Taxation follow:]

[Press Release No. H-32]

FINANCE SUBCOMMITTEE ON IRS OVERSIGHT ANNOUNCES HEARING ON TAXPAYERS' BILL OF RIGHTS

WASHINGTON, DC.—Senator David Pryor (D., Arkansas), Chairman of the Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service, announced today that the Subcommittee will hold a hearing on April 10, 1987 on proposed legislation providing a taxpayers' bill of rights.

"The April 15 tax deadline is approaching and millions of Americans are sitting down to fill out their tax returns,"

"There is no reason why honest people should have to do this with fear in their hearts, but they do because of IRS policies that harass and intimidate taxpayers and ignore basic individual rights," he said. "For this reason it is time to move forward with a Taxpayers' Bill of Rights that will protect taxpayers from heavy-handed abuse and bureaucratic incompetence."

"Once my subcommittee on IRS oversight reports out this bill, I hope the full Congress will move quickly to take it up for consideration," Pryor said.

The hearing will begin at 9:00 a.m. on Friday, April 10, 1987 in room SD-215 of the Dirksen Senate Office Building.

STATEMENT OF SENATOR DAVID PRYOR

CHAIRMAN OF THE FINANCE SUBCOMMITTEE ON PRIVATE

RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE

As everyone in this country is painfully aware, Wednesday is April 15th, the deadline for filing federal income tax returns. This means that in many households around the country, this weekend will be spent filling out 1040 forms.

For most taxpayers, filing an income tax return and receiving a refund is their only experience with the Internal Revenue Service. For some, however, it is only the beginning. Our goal in introducing the Taxpayers' Bill Rights is to ensure that those taxpayers who, for whatever reason, become entangled with the IRS are still afforded their basic due process rights.

Let me stress at this time that I did not call this hearing to "bash" the IRS. I believe that Commissioner Lawrence Gibbs is sincerely concerned about taxpayer relations. In the short time that he has been commissioner, he has repeatedly spoken about what he wants to do to improve taxpayer services and to encourage professionalism within the IRS. I hope that his good work proves

to be successful, and that we will once again see an IRS that the citizens of this country respect and not fear.

Last year, Congress overhauled the Nation's tax laws. The taxpayers of this country heard a great deal about simplification and reform. However, as the public backlash from the controversy over the W-4 form demonstrates, most taxpayers measure simplification and reform not by the various changes made to a 1,500 page volume of the Internal Revenue Code. These are judged, rather, by the quality and clarity of the forms they must fill out, by the professionalism and courtesy of IRS employees, and by the evenhandedness of the government's administration of the collection process.

Since we introduced the Taxpayers' Bill of Rights, I have received hundreds of letters from throughout the country. Some of these letters are from people who have fought with the IRS over a tax deficiency. Others write to tell me that they just plain do not like to pay taxes. Surprisingly, though, most of the letters were from people like you and me who basically believe that paying taxes is the price we pay for a civilized society. But they were writing to me because they had experienced harsh treatment from the IRS. Some were writing because they had encountered an uncooperative or rude IRS employee, or had spent

months convincing the IRS that they had made a mistake. Often, they were afraid that the IRS might seize everything they owned. And some wrote because the IRS had unnecessarily and undeservedly put them out of business or had ruined them financially for life.

Today we are going to hear from some of these taxpayers. In addition, we are going to discuss with some tax practitioners about what can be done to improve IRS audit and collection procedures.

What I have learned so far about IRS practices leads me to believe that these days the IRS, whether purposefully or not, suffers from a bully mentality. Like a bully, the IRS relies on intimidation and arm twisting to strike fear in the hearts of those it bullies. Some employees within the IRS seem to use these intimidation tactics, not only to secure payment from delinquent taxpayers, but to strike fear in the hearts of all taxpayers. And they do this in the name of compliance. It is my guess that compliance could be improved not by continuing to browbeat taxpayers, but by reestablishing respect for the IRS in the manner in which it performs a difficult and unpopular task.

We must keep in mind during this hearing that collecting taxes is essential if a government is to perform its basic

responsibilities. I am not talking now about routine collections, but instead about the scare tactics of a powerful and intimidating arm of the government. I am talking about seizure. We must keep in mind the dangers of giving any agency the unchecked force that can literally destroy citizens in this country. These are individual taxpayers. They have rights that must be protected. And that is what we are here to do this morning.

DESCRIPTION OF S. 604 AND S. 579 (TAXPAYERS' BILL OF RIGHTS ACT)

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

SENATE COMMITTEE ON FINANCE

ON APRIL 10, 1987

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

The Senate Finance Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service has scheduled a public hearing on April 10, 1987, on two bills generally relating to the rights of taxpayers in dealing with the Internal Revenue Service (IRS). The bills are S. 604, The Omnibus Taxpayers' Bill of Rights Act (introduced by Senators Pryor, Grassley, and Reid), and S. 579, The Taxpayers' Bill of Rights Act (introduced by Senators Reid, Nickles, and Breaux).

This pamphlet,[1] prepared in connection with the hearing, contains four parts. The first part is a summary of the bills. The second part provides background information on IRS operations. The third part provides a more detailed description of the provisions of both bills, including effective dates. (Because a number of the provisions of both bills are identical, the description is organized topically, rather than by bill; the description notes which bill includes which particular provision.) The fourth part includes a brief discussion and analysis of the issues raised by the bills.

[1] This pamphlet may be cited as follows: Joint Committee on Taxation, *Description of S. 604 and S. 579 (Taxpayers' Bill of Rights Act)* (JCS-9-87), April 9, 1987.

I. SUMMARY

Both S. 604 and S. 579 would: (1) require the IRS to develop and distribute to taxpayers a statement of the rights and obligations of both the taxpayer and the IRS; (2) establish an Office of Inspector General at the Treasury; (3) specify rules and procedures involving taxpayer interviews; (4) require additional General Accounting Office (GAO) oversight of the administration of the internal revenue laws; (5) prohibit consideration of revenue raised in the evaluation of IRS personnel; (6) prohibit tax-related investigations into the beliefs or associations of any individuals or organizations; (7) liberalize levy and seizure procedures; (8) provide for greater administrative and judicial review of jeopardy levies and assessments; (9) authorize (and in certain instances, mandate) that the IRS enter into installment payment agreements with taxpayers; (10) impose limits on class audits based upon a taxpayer's trade, business, or profession; and (11) shift the burden of proof to the Government in all administrative and judicial tax proceedings.

S. 579 would, in addition, allow taxpayers to sue IRS employees for civil rights violations.

S. 604 would make five additional changes to the administration of the internal revenue laws. The bill would: (1) provide that any deficiency in tax, interest, and penalties that results from incorrect written advice given to taxpayers by the IRS may not be collected; (2) authorize the Taxpayer Ombudsman to issue "taxpayer assistance orders" to assist taxpayers who request help; (3) permit taxpayers to appeal liens administratively; (4) preclude IRS levies where the expenses of levy exceed the value of the property levied or the liability to be satisfied; and (5) apply the Regulatory Flexibility Act to the IRS.

II. BACKGROUND

Oversight of IRS operations

The IRS, which is a part of the Department of the Treasury, frequently is the subject of studies to improve its operation. These studies may be initiated by the Secretary of the Treasury, GAO, or a Congressional committee with jurisdiction over IRS funding or administration.

The IRS maintains its own internal audit program, which reviews the processing of returns, the collection of tax revenues, and the enforcement of tax laws. The IRS also maintains an investigations program, which performs background investigations on its employees.

IRS taxpayer services

The IRS conducts a year-round tax information program throughout the country. Assistance ranges from interpreting technical provisions of the tax law and assisting taxpayers in preparing their returns to answering questions on tax account status and furnishing forms requested by taxpayers.

Taxpayer assistance is provided by three principal methods: (1) telephone assistance; (2) assistance to taxpayers who walk into an IRS office; and (3) taxpayer information and education programs, including programs directed at special groups.

The IRS has established a taxpayer complaint handling system, known as the Problem Resolution Program (PRP), in each of its offices. Under this program, there is a Problem Resolution Officer in each office. PRP was established to handle taxpayers' problems and complaints that may not have been promptly or adequately resolved through normal administrative procedures, as well as to handle those problems which taxpayers believe have not received appropriate attention. In addition, PRP is responsible for determining the underlying causes of problems encountered so that corrective action can be taken to prevent their recurrence.

The IRS has also established the office of Taxpayer Ombudsman. The Ombudsman works under the direct supervision of the Deputy Commissioner of Internal Revenue. The responsibilities of the Ombudsman include the administration of PRP and the representation of taxpayers' interests and concerns within the IRS decision-making process. Thus, the Ombudsman is charged with reviewing IRS policies and procedures for possible adverse effects on taxpayers; proposing ideas on tax administration that will benefit taxpayers; and representing taxpayers' views in the design of tax forms and instructions.

Tax liens

Understatement of income, estate, gift, or certain excise tax liability on a tax return (or failure to file a tax return) gives rise to a deficiency. The deficiency is, in the simplest case, the excess of tax due over the tax shown by the taxpayer on the tax return (sec. 6211(a)). If the IRS determines that a deficiency exists (which it generally does only after completion of the audit process), the taxpayer is mailed a notice of a deficiency (by certified or registered mail) at the taxpayer's last known address (sec. 6212). This notice generally includes information on the taxpayer's administrative and judicial appeal rights. Within 90 days (150 days if the taxpayer is outside the United States) after the notice of deficiency is mailed, the taxpayer may petition the Tax Court for a redetermination of the deficiency without prepaying the tax.

The IRS generally may not assess the deficiency and proceed with collection until the period for petitioning the Tax Court expires or, if a petition is filed, until the decision of the Tax Court becomes final (i.e., appeals, if any, are exhausted).[2] On the other hand, some assessments (such as termination assessments and jeopardy assessments authorized under secs. 6851 and 6861) can be made sooner when the taxpayer's actions seem to endanger the ability of the IRS to collect the taxes due. The Code explicitly provides that the taxpayer may obtain rapid review (both administratively and judicially) of these actions (sec. 7429).

After the tax has been assessed, the IRS must give the taxpayer, within 60 days, a notice stating the amount of the unpaid tax and demanding payment (sec. 6303). This notice is left at the dwelling or usual place of business of the taxpayer or mailed to the taxpayer's last known address.

If, more than 10 days after payment has been demanded, the taxpayer has failed to pay, then the amount owed becomes a lien in favor of the United States on all property and rights to property, whether real or personal, belonging to the taxpayer (sec. 6321). Unless removed or released, the lien continues until the tax has been paid or until the lien becomes unenforceable by reason of lapse of time (sec. 6322).[3]

Present law contains specific rules concerning lien priorities and the recordation of liens. There are no administrative procedures for appealing the imposition of a Federal tax lien. (However, there are several opportunities for appeal prior to demand for payment.)

Seizure of property for the collection of taxes

If a person fails to pay a tax within ten days after notice and demand for payment, the IRS may collect the tax by seizure and sale of the taxpayer's property (levy) (sec. 6331(a) and Treas. Reg. sec. 301.6331-1(a)). If the IRS finds that the collection of tax is in jeopardy, the IRS may collect the tax by levy without waiting the

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[2] The Tax Court is not the only judicial forum in which the taxpayer can contest his or her tax liability. The taxpayer also may contest the liability by paying the tax in full and filing a claim for refund. If the claim is denied, the taxpayer may file a suit for refund in the appropriate Federal district court or the Claims Court. Liability for taxes other than income, estate, gift, and certain excise taxes can be litigated only by refund suits.

[3] In general, the statute of limitations with respect to the collection of tax runs for six years after the assessment of the tax (Code sec. 6502).

usual ten-day period. The IRS is not required to obtain a court order before making a levy.

Property subject to levy includes any property or rights to property, whether real or personal, whether tangible or intangible, belonging to the taxpayer, subject to specific statutory exemptions. Generally, levy may be made only after the individual has been notified in writing of the intent to levy (sec. 6331(d)). This notice must be given in person, left at the dwelling or usual place of business of the individual, or mailed (by certified or registered mail) to the individual's last known address, no less than ten days before the day of levy. The notice requirement, however, does not apply if there has been a finding that the collection of the tax is in jeopardy.

The IRS may instruct the taxpayer's employer to pay to the IRS a portion of the taxpayer's wages. This type of levy on wages is continuous from the time of the levy until the liability out of which the levy arose is satisfied or becomes unenforceable due to lapse of time.

In addition to the employer of the taxpayer, other parties holding the taxpayer's property may be forced to turn it over to the IRS pursuant to a levy. In general, any person in possession of (or obligated with respect to) property or rights to property upon which levy has been made must surrender it upon demand (sec. 6332(a)). Any person who fails to surrender property upon demand becomes personally liable in an amount equal to the lesser of the value of the property or the amount of the tax liability with respect to which the levy was made, plus costs and interest from the date of the levy (sec. 6332(c)). In addition, that person is subject to a penalty equal to 50 percent of the amount for which there is personal liability.[4] A person (other than the taxpayer) who surrenders the property at the Government's demand is discharged from liability to the taxpayer (sec. 6332(d)).

Exemptions from levy

Present law[5] exempts the following from levy:

(1) wearing apparel and school books;

(2) fuel, provisions, furniture, personal household effects, livestock, and poultry, not exceeding $1,500 in value;

(3) books and tools necessary for the trade, business, or profession of the taxpayer, not exceeding $1,000 in aggregate value;

(4) unemployment benefits;

(5) undelivered mail;

(6) certain annuity, pension, and military service disability payments;[6]

(7) amounts payable under workers' compensation laws;

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[4] This penalty is not applicable if a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy (Treas. Reg. sec. 301.6332-1(d)).

[5] Code sec. 6334 and Treas. Reg. secs. 301.6334-1 and 301.6334-2.

[6] That is, annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll, and annuities based on retired or retainer pay under Chapter 73 of title 10 of the U.S. Code.

(8) so much of the wages, salary, or other income of the taxpayer as is necessary to comply with a prior judgment of a court of competent jurisdiction for support of the taxpayer's minor children; and

(9) a minimum amount of wages, salary, and other income (in general, $75 per week plus $25 per week for each dependent).

III. DESCRIPTION OF THE PROVISIONS OF S. 604 AND S. 579

1. Disclosure of rights and obligations of taxpayers (S. 604 and S. 579)

The bills would require the Treasury Department to prepare a statement of the rights and obligations of taxpayers, which would have to be distributed along with any other forms sent by the IRS to taxpayers. This statement must include a simple, nontechnical description of: (1) the rights and obligations of both the taxpayer and the IRS during an audit; (2) the procedures by which a taxpayer may appeal any adverse decisions of the IRS; (3) the procedures for pursuing refund claims and filing taxpayer complaints; and (4) the procedures that the IRS may use in enforcing the internal revenue laws.

The Treasury statement must be prepared not later than 180 days after the date of enactment. Drafts of the statement must also be distributed to the tax-writing committees of the Congress, and the statement may not be distributed to the public until 90 days after it has been provided to the tax-writing committees.

2. Office of Inspector General (S. 604 and S. 579)

The bills would create an Office of Inspector General in the Department of the Treasury and would transfer to this Inspector General certain internal audit authority currently held by various other offices in the Treasury. This provision would be effective on the date of enactment.

The bills also provide that the Inspector General could not review certain activities. These activities would be the development and exercise of monetary, fiscal, and tax policy and the exercise of legal judgment in the investigation and litigation of cases (other than with regard to efficiency and conformance with Department of the Treasury policy).

3. Procedures involving interviews of taxpayers (S. 604 and S. 579)

The bills would specify several procedural rights of taxpayers who are interviewed by the IRS in connection with the assessment of a deficiency. (Presumably this would include audits, appeals conferences, and related activities.)

First, a taxpayer would be permitted to request that an interview in connection with the assessment of a deficiency be held at a time and place reasonable to both the taxpayer and the IRS employee. Second, the taxpayer would be allowed to make a recording of the interview at his or her own expense. If the IRS employee wishes to make a recording of the interview, he or she must so inform the taxpayer prior to the recording and offer a transcript of this recording to the taxpayer (so long as the taxpayer pays the cost of reproduction). Third, prior to any interview, the IRS employee

would have to inform the taxpayer: (1) that the taxpayer has a right to remain silent; (2) that any statement the taxpayer makes may be used against him; and (3) that the taxpayer has a right to the presence of an attorney, certified public accountant (CPA), enrolled agent, or enrolled actuary. The taxpayer may waive these rights. In addition, if the taxpayer indicates at any time during the interview that he or she wishes to consult an attorney, CPA, enrolled agent, or enrolled actuary, the interview must be discontinued at that point and no further questioning of the taxpayer is permitted.

Further, the bills provide that the IRS would be required to deal directly with the person (such as an attorney or accountant) holding a written power of attorney from the taxpayer. Upon notice to the taxpayer that the holder is responsible for unreasonable delay or hindrance of IRS investigations, the IRS may cease dealing with the holder and then deal with the taxpayer.

These provisions would be effective on the date of enactment.

4. General Accounting Office oversight of the administration of the internal revenue laws (S. 604 and S. 579)

The bills would mandate two types of oversight of the IRS by GAO. First, the bills would give authority to GAO to conduct any special audit or investigation requested by any committee or Member of Congress. Second, the bills would direct the GAO to prepare an annual report on the administration of the internal revenue laws, covering nine specified areas.

The bills also would amend the present-law provision (sec. 6103(i)(7)) that permits the Joint Committee on Taxation, by a two-thirds vote, to disapprove the use of confidential tax return information in an audit by GAO. The bills would provide that the Joint Committee could only recommend disapproval of the use of confidential tax return information to the Congress. The bills would require that the Congress then pass, within 30 days of the recommendation by the Joint Committee, a joint resolution denying GAO access to confidential tax return information. If this resolution is not passed, GAO would be able to obtain access to confidential tax return information.

These provisions would be effective on the date of enactment.

5. Basis for evaluation of IRS employees (S. 604 and S. 579)

The bills would mandate that the evaluation of all IRS personnel by their superiors must not be based in any way on the amounts collected by the IRS as a result of their audit or investigative work. This provision would be effective on date of enactment.

6. Authorizing, requiring, or conducting certain investigations (S. 604 and S. 579)

The bills would provide that Federal employees (including IRS employees) could not authorize, require, or conduct tax-related investigations into or surveillance of the beliefs or associations of any individual or organization; neither could they maintain records derived from such investigations. An exception to this prohibition would be made for organized crime activities. Violators of this prohibition would be subject to fines of not more than $10,000, or im-

prisonment of not more than two years, or both. Violators also would be liable for damages to the individual or organization investigated. This provision would generally be effective on the date of enactment.

7. Levy and seizure (S. 604 and S. 579)

The bills would make several changes to the levy and seizure procedures. These changes would generally be effective for levies made on or after the date of enactment.

First, the bills would increase from 10 days to 30 days the time which must elapse after notice and demand before the IRS could levy on a taxpayer's property. Second, when notice of levy is made, the IRS would be required to provide information to the taxpayer regarding applicable Internal Revenue Code citations and the procedures applicable to the levy, as well as the administrative appeals available to the taxpayer. The bills also would increase the amount of property exempt from levy, allow for changes in the effect of levy pursuant to an agreement between the IRS and taxpayer, and make other changes in the levy procedures.

8. Review of jeopardy levy and assessment (S. 604 and S. 579)

The bills would make the administrative and judicial review procedures that apply under present law to jeopardy assessments also applicable to levies. The bills would also expand administrative redetermination and judicial review of these actions. These provisions would be effective on the date of enactment.

9. Installment payments of tax liability (S. 604 and S. 579)

The bills would authorize the IRS to enter into written agreements with taxpayers to satisfy their tax liability by installment payments if the IRS determines that the agreement would facilitate payment. The bills would require the IRS to make a written offer to enter into an installment payment agreement with taxpayers whose tax liability does not exceed $20,000 and who have not been delinquent under any other installment payment of tax agreement in the recent past. Interest would be charged at the statutory rate on all installment payments.

The bills also provide that these installment payment agreements would be binding, unless the taxpayer provided inaccurate or incomplete information or if the taxpayer's financial conditions change. This provision would be effective on the date of enactment.

10. Limitation on class audits (S. 604 and S. 579)

The bills would permit the IRS to audit taxpayers identified with respect to a particular trade, business, or profession only if certain requirements were met. These requirements are that the IRS must: (1) provide written notice to each member of the audit group as to the item or items of such taxpayers' returns which the group has in common; (2) state the reasons why the IRS claims the returns to be incorrect; and (3) provide an opportunity to file an amended return or to contest the IRS claim either singly or through a group spokesman. If the taxpayer filed an amended return, no interest or penalties would be permitted to be imposed, notwithstanding any

other provision of law. This provision would be effective for audits commenced on or after the date of enactment.

11. Burden of proof in administrative and judicial proceedings (S. 604 and S. 579)

The bills would provide that, notwithstanding any other provision of law, the burden of proof on all issues is on the IRS. This would apply to all administrative and judicial proceedings between the IRS and a taxpayer. However, in the event the taxpayer is the sole possessor of evidence that would not otherwise be available to the IRS, the taxpayer may be required to present the minimum amount of information necessary to support his or her position. This provision would apply with respect to proceedings commenced on or after the date of enactment.

12. Written advice of IRS employees (S. 604)

Under this bill, any deficiency in tax, interest, or penalty asserted against a taxpayer must be abated if it is attributable to written advice given by an IRS employee in response to a specific request of a taxpayer, unless the taxpayer failed to provide full and accurate information. Also, the bill would require IRS employees to inform every taxpayer to whom they give oral advice that the IRS is not bound by oral advice. This provision would be effective on the date of enactment.

13. Taxpayer assistance orders (S. 604)

The bill would grant authority to the Office of Ombudsman to issue taxpayer assistance orders, upon the request of a taxpayer. These orders would require the IRS to take action (or cease action) to assist taxpayers.

The Ombudsman could issue a taxpayer assistance order if the taxpayer is suffering (or is about to suffer) unusual, unnecessary, or irreparable loss due to the administration of the internal revenue laws, due to the failure of IRS employees to carry out any provision of law, or due to a violation of any provision of law by an IRS employee. The Ombudsman could require the IRS to take specific actions, such as to release a levy on property or to cease any current or future action in the collection process. This provision would be effective on the date of enactment.

14. Administrative appeal of liens (S. 604)

The bill would provide for administrative appeals of liens on taxpayers' property or rights to property. The IRS would be required to issue regulations implementing this provision within 180 days of the date of enactment.

15. Minimum sales price (S. 604)

The bill is intended to preclude the IRS from levying on property if the expenses of the levy are greater than the value of either the property or the tax liability.[7] This provision would be effective on the date of enactment.

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[7] A technical correction to the language of the bill as introduced may be necessary to effectuate this intent.

16. Application of the Regulatory Flexibility Act to the IRS (S. 604)

The bill would apply the Regulatory Flexibility Act to all rules and regulations prescribed by the Treasury Department (including the IRS). (The Regulatory Flexibility Act requires that all rules and regulations must be analyzed for their impact on small business.) This provision would apply to any rule or regulation prescribed after the date of enactment.

17. Civil action for deprivation of rights by IRS employees (S. 579)

The bill would create a Federal cause of action under which any person could sue any officer or employee of the IRS who in his or her official capacity deprives that person of rights under the Constitution or laws of the United States. This provision would apply to actions arising on or after the date of enactment.

IV. ISSUES AND ANALYSIS

The proposals in S. 604 and S. 579 present a variety of issues, which can generally be grouped into three categories. The first category includes proposals to protect taxpayers by providing them with increased information. The second category involves the tax collection process. The third category involves reforms of the lien and the levy process. There is considerable overlap among these categories.

Taxpayer protection

The first category involves taxpayer protection. One goal of these provisions appears to be to increase the information available to the taxpayer in his or her dealings with the IRS. Several provisions of one or both bills fall into this category: disclosure of rights and obligations of taxpayers; procedures involving taxpayer interviews; authorizing, requiring, or conducting certain investigations; limitation on class audits; and written advice of IRS employees.

The first two provisions in this category address concerns that ordinary taxpayers may not sufficiently understand their procedural rights in the tax collection process to protect their interests. One issue is the extent to which information the IRS currently provides to taxpayers meets the goals of this provision.

Another proposal precludes any tax-related investigation by the Federal Government (including the IRS) into the beliefs or associations of individuals or organizations. One issue is whether any of the investigations that would be prohibited by the bills could be useful in enforcing the internal revenue laws. Another issue is whether the exception to this prohibition relating to organized crime activities is clearly defined and administratively feasible. Also, it is possible that the organized crime exception is too narrow. It may not be clear, for example, whether the IRS would be prohibited under this provision from investigating drug-dealing organizations.

Another provision would limit the use of class audits. One issue is whether some of these audits may be necessary to determine taxpayer's proper tax liabilities. If they are necessary, this provision could impede the collection of revenues. Another issue is whether taxpayers involved in these audits should receive preferential treatment (such as, for example, the prohibition of the imposition of interest and penalties on these taxpayers in certain circumstances) over other taxpayers involved in other types of audits.

The final proposal in this category, concerning written advice of IRS employees, provides that the party that provides written advice (i.e., the IRS and not the taxpayer) should bear the responsibility for any misadvice given. The IRS currently provides administratively that taxpayers may rely on the written advice given by the IRS in a private letter ruling. The provision in the bills would

codify this administrative rule. One issue is whether this provision of the bills would have any further affect on current practice.

Tax collection and administration process

The second category of proposals involves the tax collection and administration process, most specifically in the area of investigations. Several provisions in one or both bills fall into this category. They are: Office of the Inspector General; GAO oversight of the administration of the internal revenue laws; basis of evaluation of IRS employees; installment payments of tax liability; shifting the burden of proof in administrative and judicial proceedings; taxpayer assistance orders; application of the Regulatory Flexibility Act to the IRS; and civil action for deprivation of rights by IRS employees.

The first two areas in this category would establish additional oversight mechanisms, which may be more efficient or responsive to Congressional inquiries. One issue is whether the establishment of these new investigatory requirements would promote greater efficiency in IRS operations without undue cost or complexity.

Other proposals attempt to establish control over potentially overzealous IRS employees. It is argued that collection of money by the IRS without regard for the rights of taxpayers may erode confidence in the tax system and cause taxpayer dissatisfaction and chronic noncompliance. One issue presented by the employee evaluation proposal is whether IRS employees perceive that large collections have greater positive effects on their careers than any negative effects resulting from violations of taxpayers' rights.

An issue raised by the imposition of civil liability on individual IRS employees is whether doing so could have a chilling effect on the lawful performance of their duties, could subject them to harassment lawsuits, or could harm IRS employee recruitment.

One provision authorizes (and in certain instances, mandates) that the IRS enter into installment payment agreements with taxpayers. One issue is the effect of this provision on Federal revenues. Although the bills require that taxpayers pay interest on these installment payments, the provision might nonetheless decrease Federal revenues due to increased collection difficulties.

The mandatory installment payment provision raises several other issues. One is the effect of this provision on taxpayers' perceptions of the fairness of the income tax laws. For example, requiring the IRS to enter into installment payment agreements with taxpayers who negligently or fraudulently understate their income could negatively affect taxpayers' perceptions of the fairness of this provision. Another factor affecting taxpayers' perceptions could be the types of taxpayers most likely to be eligible for the mandatory installment payment provision. Most taxpayers earn wages, from which income taxes are withheld by their employers. Generally, income tax withholding from wages closely approximates (or exceeds) ultimate income tax liability. Consequently, a comparatively small portion of wage earners owe taxes when they file their returns. A much higher proportion of taxpayers making estimated tax payments owe taxes when they file their tax returns. Thus, taxpayers with substantial amounts of non-wage income would be much more likely to be eligible to utilize this provision than tax-

payers with mostly wage income. This could affect taxpayers' perceptions of the fairness of this provision.

Another provision would shift the burden of proof on all issues to the Government in all administrative and judicial proceedings between the IRS and the taxpayer, thereby completely reversing the present relative position of the parties in tax cases. One issue is the effect this change in the burden of proof would have in altering the nature or increasing the complexity of administrative and judicial proceedings. Another issue is the effect of this provision on Federal revenues. For example, this provision could decrease Federal revenues if it impaired the ability of the IRS to deal with taxpayers who take positions that may not be supported by the law.

Another provision would apply the Regulatory Flexibility Act to the IRS. This provision would require analysis of all IRS rules and regulations as to their possible impact on small business. One issue is the extent to which the interests of taxpayers such as small businesses may already be adequately safeguarded in the rulemaking process. Another issue is the extent to which this might impede the process of issuing guidance to taxpayers. Another issue is whether it is appropriate to consider the impact of a regulation upon only one category of taxpayers.

The provision relating to taxpayer assistance orders would establish a system for relief in individual cases, to be ordered by the Office of the Taxpayer Ombudsman. One issue is the extent to which current remedies and programs, such as the Problems Resolution Program, already fill this need.

Tax lien and levy process

The third category involves reforms of the tax lien and levy process. These provisions generally add to the notice, appeal, and exemption rights of taxpayers. The provisions falling in this category are levy and seizure, administrative appeal of liens, minimum sales price, and review of jeopardy levy and assessment. One issue is whether the benefits to taxpayers of these provisions outweigh the added administrative burden they entail. A further issue is whether these provisions could impede the collection of revenues. A further issue is the extent to which permitting administrative appeals of liens may duplicate any already existing appeals rights of taxpayers.

Senator PRYOR. The committee will come to order. We would like to welcome this morning our witnesses to this hearing, and I have a very short statement. Then, I will call on Senator Reid and Congressman Tallon. I have indications that other members of the Senate Finance Committee will be coming in this morning to make statements and perhaps ask some questions.

Because of flight schedules out, we are going to give, let's say, some preference to those members of the committee—especially the members of the Senate and the House—who desire to make a statement and then stay for as long as possible.

After the members of the Senate and the House have finished their statements, then I will invite them to participate with us as a panel, as members of this committee. I have been authorized to do that, and we do welcome them this morning.

As everyone in America is painfully aware, Wednesday, April 15 is the deadline for filing Federal income tax returns. This means that many American households around the country this weekend will be filling out 1040 forms.

For most taxpayers in our country, filing an income tax return, paying taxes, and/or receiving a refund is their only experience with the Internal Revenue Service. For some, however, it is only the beginning. Our goal in introducing the Taxpayers' Bill of Rights is to ensure that those taxpayers who, for whatever reason, become entangled or find themselves in a dispute with the IRS are still afforded their basic due process rights. That is what the Taxpayers' Bill of Rights is all about.

Let me stress this morning that I did not call this hearing to "bash" the Internal Revenue Service. In fact, I strongly believe that our new Commissioner, Lawrence Gibbs, is sincerely concerned about taxpayer relations. In the short time that he has been our Commissioner, he has repeatedly spoken about what he wants to do to improve taxpayer services and to encourage professionalism within the IRS.

I hope that his good work and intentions will be successful, and that we will once again see an Internal Revenue Service that the citizens of this country respect and not fear.

Last year, Congress overhauled the nation's tax laws. In fact, in this very room where the Finance Committee sits, we spent literally hundreds of hours in that effort. The taxpayers of America heard a great deal about simplification and reform. However, as the public backlash from the controversy over the W-4 Form demonstrates, most taxpayers measure simplification and reform not by the various changes made to the 1,500 page volume of the Internal Revenue Code. These are judged, rather, by the quality and clarity of the forms they must fill out, by the professionalism and courtesy of the IRS employees, and by the evenhandedness of the Government's administration in the collection process. Most IRS employees are, in fact, true professionals. They are committed to fairness, to the system, and to the taxpayer; and it is not an easy task.

Since we introduced the Taxpayers' Bill of Rights, I have received hundreds of letters from throughout America. Some of these letters are from people who have a disagreement and who have fought with the IRS over a tax deficiency.

Others write to tell me they just don't like to pay taxes, period. Surprisingly, though, most of the letters are from people like you and me who basically believe that paying taxes is the price we must pay for a civilized society.

But many write to me because they have experienced harsh, rude, and sometimes even brutal treatment from the IRS. Some are writing because they had encountered an uncooperative or rude IRS employee, or had spent months convincing the IRS that they had made a mistake; and often, they were afraid that the IRS might seize everything they owned. And some wrote claiming the IRS had unnecessarily and undeservedly put them out of business or had ruined them financially for life. Today, we are going to hear from some of those taxpayers. In addition, we are going to discuss with some tax practitioners about what can be done to improve the IRS audit and collection procedures.

What I have learned so far about IRS practices leads me to believe that these days the Internal Revenue Service, in many cases, whether purposely or not, suffers a bully mentality. And like a bully, the IRS relies on intimidation and arm-twisting to strike fear in the hearts of those that it bullies. Some employees within the IRS seem to use these intimidation tactics not only to secure payment from delinquent taxpayers, but also to strike fear in the hearts of all taxpayers. And they do this in the name of compliance.

It is my guess that compliance could be improved not by continuing to browbeat taxpayers, but by reestablishing respect for the IRS in the manner in which it performs a difficult and, let us admit, unpopular task.

We must keep in mind during this hearing that collecting taxes is essential if a government is to perform its basic responsibilities. I am not talking now about routine collections, but instead about the scare tactics of a powerful and intimidating arm of the United States Government. I am talking about seizure. I am talking about collection. We must keep in mind the dangers of giving any agency the unchecked force that can literally destroy citizens in this country.

These are individual taxpayers. They are small business people. They are people from all walks of life. They have rights that must be protected, and that is what we are here about this morning.

Our witnesses may note that the Internal Revenue Service will not, in fact, testify this morning. Rather, they will testify basically in an answer to this hearing on the morning of April 21, and we look forward to hearing from the Internal Revenue Service at that particular hearing.

Our first witness this morning is the Honorable Charles Grassley, United States Senator from the State of Iowa. Senator Grassley, we look forward to your statement. We appreciate your being here. You have certainly been in the forefront of this effort to protect and to ensure the rights of the American taxpayer. Senator Grassley?

STATEMENT OF THE HONORABLE CHARLES GRASSLEY, U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you very much, Mr. Chairman, and I want to thank you for inviting me to testify today on S. 604, the Pryor-Grassley-Reid Omnibus Taxpayers' Bill of Rights. As a former chairman of this oversight subcommittee, I certainly understand the tremendous responsibilities that you have undertaken, and I surely want to continue working with you, and I want to compliment you for your leadership; but as in the past, we are going to be working together to bring about real taxpayers' rights reform.

Mr. Chairman, the bill before us builds upon past legislation that I, as well as yourself and Senator Reid, have worked on for a number of years. We have had some successes in the past; but of course, there remains much to be done, and this very important legislation that you have put together and the many facets of it just speak to the point that much remains to be done. But we will accomplish much this year, I believe.

Over the years, as a member of Congress and as the chairman of the IRS Oversight Subcommittee, I have received taxpayers' complaints regarding IRS abuse and harassment from my own State of Iowa, as well as from around the country, as I am sure you are doing right now from Arkansas, as well as from around the country as well.

Some of these complaints are undoubtedly not warranted, as tax collectors have historically been the object of public criticism and attack. I certainly do not encourage baseless criticism or condone taxpayers' resistance or the nonpayment of taxes. However, even the IRS has recognized the fact that problems exist, and some taxpayers are abused.

According to the IRS Office of Inspection, the IRS conducted 582 investigations of alleged employee misconduct in 1985. Various forms of disciplinary action were taken against 221 of these employees. In addition, at least 84 of the employees were convicted for crimes relating to their IRS employment. These statistics were released in hearings which I chaired in the subcommittee last year on the subject of taxpayers' abuses.

The main focus of these hearings was on two Federal criminal tax cases. They are entitled The United States versus Omni International Corporation, and the second case was the United States versus Kilpatrick. Both of these cases involved taxpayer abuse by the Federal Government.

In particular, the District Court found—and I am speaking of the District Court—that the Government prosecutors had fabricated evidence and misled the court in the case against Omni. In the Kilpatrick case, another court found that the Government had violated Federal criminal rules, had mistreated witnesses, had misinformed a grand jury, and had violated the defendant's Fifth and Sixth Amendment rights. So, taxpayer abuse does exist.

And how can you argue with another branch of Government, the Judiciary Branch, even speaking along these lines as many members of Congress have? And because has authorized increased funding for thousands of additional IRS agents, the potential for in-

creased abuse, of course, has been multiplied. One of the reasons for taxpayer abuse is ignorance of the law on the part of IRS tax collectors.

I know that it sounds incredible that there are some Government agents out there levying fines, seizing property, and collecting taxes who are uninformed about the law; but it is unfortunately true. Now, a perfect example of this problem is contained in a recent letter sent to my office by an IRS agent from Illinois. In that letter, the agent criticized the bill we are now considering. More specifically, this officer couldn't believe one of the horror stories cited by you, Mr. Chairman, that involved a requirement that a 1099 Form be typed with a 10-pitch typewriter. Because the taxpayer filled out his form with the wrong kind of type, he was—as you told that story—assessed several thousands of dollars of penalties.

The agent stated in his letter the following, and I quote from that IRS agent's letter at this point: "I know of no provision in the law or regulations stipulating even the typing of any forms, let alone the specific typewriter." And I will have the body of the letter inserted in the record at this point.

Mr. Chairman, according to the instructions of that very 1099 form that you referred to, the taxpayers must "type or print data entries using a carbon-based black ink ribbon; print must be in 10-pitch black type." Now, if the taxpayer doesn't follow these instructions, then $50.00 fines are assessed for each failure to comply.

So, Mr. Chairman, we see that there is at least some ignorance or misunderstanding on the part of the IRS as to what actually is the law. This can only lead to further taxpayer mistreatment. The main reason taxpayer abuse has been allowed to exist is because the Treasury Department is one of the most powerful Government agencies and, at the same time, one of the least regulated by the Congress.

Out of all the Cabinet departments, Treasury and Justice are the only departments without a statutory inspector general that reports directly to the Congress of the United States. Consequently, Congress is kept in the dark about activities within the Treasury, including the Internal Revenue Service.

Our legislation will help alleviate this problem by creating a statutory office of inspector general within the Treasury that will audit and investigate the department and make reports to Congress. The General Accounting Office strongly supports this modification, which will make the department more efficient and ultimately more productive.

Our legislation includes a number of additional provisions such as increasing the IRS Ombudsman power to prevent the unjust taking of taxpayers' property, and that will help protect the rights of taxpayers while allowing the IRS to do its job effectively and to collect taxes.

Mr. Chairman, we all know that 1986 was the year of tax reform. Now, we need to make 1987 the year of taxpayers' rights reform in an effort to make this system more fair and acceptable to the citizens of our country. Thank you.

Senator PRYOR. Senator Grassley, thank you. We did adopt a five-minute rule, I guess; but you were doing so well, I was going to yield to you all the time you needed. [Laughter.]

Senator Grassley, thank you. And right before you entered the hearing room this morning, we did announce that all of the participants from the House and the Senate would be invited momentarily to participate as a panel.

Senator GRASSLEY. I thank you for that.

Senator PRYOR. We will invite you momentarily. We would like to present to the committee next the Honorable Harry Reid, the United States Senator from the State of Nevada. Senator Reid, in his short tenure in the Senate, has done a great deal of work in this field, and Senator Reid, we are very proud that you are here this morning.

[The prepared statement of Senator Grassley and the IRS agent's letter follow:]

STATEMENT BY SENATOR CHARLES E. GRASSLEY ON S. 604, THE OMNIBUS TAXPAYERS' BILL OF RIGHTS

Mr. Chairman:

I want to thank you for inviting me to testify today on S.604, the Pryor-Grassley-Reid Omnibus TaxpayerS' Bill of Rights.

As a former chairman of this oversight subcommittee, I certainly understand the tremendous responsibilities you have undertaken and I hope to continue working with you, as I have in the past, to bring about real taxpayer rights reform.

Mr. Chairman, the bill before us builds upon past legislation that I, as well as yourself and Senator Reid have worked on for a number of years. We've had some successes in the past, but there remains much to be done.

Over the years as a Member of Congress, and as a chairman of the IRS oversight subcommittee, I have received taxpayer complaints regarding IRS abuse and harassment from my own state of Iowa, as well as from around the country. Some of these complaints are, undoubtedly, unwarranted as tax collectors have historically been the object of public criticism and attack. I certainly do not encourage baseless criticism or condone taxpayer resistance or non-payment of taxes.

However, even the IRS has recognized the fact that problems exist and that some taxpayers are abused. According to the IRS Office of Inspection, the IRS conducted 582 investigations of alleged employee misconduct in 1985. Various forms of disciplinary action were taken against 221 employees. In addition, at least 84 of these employees were convicted for crimes related to their IRS employment.

These statistics were released in hearings I chaired in this subcommittee last year on the subject of taxpayer abuses. The main focus of these hearings was on two federal criminal tax cases, the United States versus Omni International

Corporation and United States versus Kilpatrick. Both of these cases involved taxpayer abuse by the federal government. In particular, the District Court found that government prosecutors had fabricated evidence and misled the court in the case against Omni. In the Kilpatrick case, another court found the government had violated federal criminal rules, had mistreated witnesses, had misinformed a grand jury and had violated the defendant's Fifth and Sixth Amendment rights.

So, taxpayer abuse does exist, and because Congress has authorized increased funding for thousands of additional IRS agents, the potential for increased abuse has been multiplied.

One of the reasons for taxpayer abuse is ignorance of the law on the part of IRS tax collectors. I know it sounds incredible that there are some government agents out there levying fines, seizing property and collecting taxes, who are uninformed about the law, but it is unfortunately true.

A perfect example of this problem is contained in a recent letter sent to my office by an IRS agent from Illinois. In the

letter, the agent criticized the bill we are now considering. More specifically, the officer couldn't believe one of the "horror stories" cited by one of my colleagues that involved a requirement that the 1099 form be typed with a 10 pitch typewriter. Because the taxpayer filled out his forms with the wrong kind of type, he was assessed penalties. The agent stated in his letter the following: "I know of no provision in the law or regulations stipulating even the typing of any forms, let alone the specific typewriter... ."

Mr. Chairman, according to the instructions for the 1099 form, a taxpayer must "type or print data entries using a carbon-based black ink ribbon. Print must be in 10 pitch black type." If the taxpayer doesn't follow these instructions, then 50 dollar fines are assessed for each failure to comply. So, Mr. Chairman, we see that there is at least some ignorance or misunderstanding on the part of the IRS as to what actually is the law. This can only lead to further taxpayer mistreatment.

The major reason taxpayer abuse has been allowed to exist is because the Treasury Department is one of the most powerful government agencies, but one of the least regulated by Congress. Out of all the Cabinet departments, Treasury and Justice are the only departments without a statutory Inspector General that reports to Congress. Consequently, Congress is kept in the dark about activities within Treasury, including the IRS. Our legislation will help alleviate this problem by creating a statutory office of Inspector General within Treasury that will audit and investigate the department and make reports to Congress. The Government Accounting Office strongly supports this modification that will make the department more effecient and ultimately more productive.

Our legislation includes a number of additional provisions such as increasing the IRS Ombudsmans' power to prevent the unjust taking of taxpayer property, that will help protect the rights of taxpayers while allowing the IRS to do its job effectively and collect taxes.

Mr. Chairman, we all know that 1986 was the year of tax reform. Now, we need to make 1987 the year of taxpayer rights reform in an effort to make the system more fair and acceptable to the citizens of this country.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

JUN 4 1987

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

In response to your questions of the Commissioner at the Subcommittee on Private Retirement Plans and IRS Oversight Hearing on the Taxpayers' Bill of Rights, I am enclosing the requested information concerning the Inspector General, and the internal IRS audits and investigations.

The enclosed information will be included in the hearing record.

With best wishes, I am

Sincerely,

Bryan Slone
Assistant to the Commissioner
(Legislative Liaison)

Enclosure

74-603 0 - 87 - 2

INSPECTOR GENERAL AUDIT AND INVESTIGATIVE AUTHORITY

How much direct audit and investigative responsibility does the Inspector General have over the total Treasury budget and what percentage of the Treasury staff is subject to his direct audit or investigative authority?

The Inspector General had a direct audit and investigative responsibility in FY 85 over 11% of the Treasury's total budget ($597.8 million out of $5.4 billion) and over 7% of the Treasury's staff (8,451 out of 122,236 employees).

INTERNAL INVESTIGATIONS AND AUDITS

How many internal investigations as opposed to audits were conducted within the IRS in fiscal year 1986?

In FY 86, 2,719 internal investigations were conducted as opposed to 360 internal audits during the same time.

FORMAL REFERRALS DURING FY 86 TO THE INSPECTOR GENERAL

How many internal audits or investigations were referred to the Inspector General in 1986?

During FY 86, 60 audits and 31 investigations were formally referred to the Inspector General. In addition, IRS Inspection informally apprised the Inspector Genueral of other audits and investigations at monthly meetings between the two offices. The number of those informally discussed is not documented.

CASES REFERRED TO INSPECTOR GENERAL DURING FY 86

What did the 60 cases referred to the Inspector General deal with?

Of the 60 internal reports that went to the Inspector General, approximately 30 dealt with review of processing returns and documents, collection or examination procedures and communications with taxpayers; 14 dealt with review of procurement or imprest funds policies and procedures and the remaining 16 covered a broad spectrum of areas within the Service. A list of the 60 cases referred to the Inspector General is attached.

Date of Report	Title
11/22/85	Review of the Los Angeles District Small Purchases Imprest Fund (Ref. # 95113
01/24/86	Selected Payroll Activities at the IRS Data Center (Ref. # 060111)
02/07/86	The Effectiveness and Efficiency of the Procurement System in the North Atlantic Region (Ref. # 66011
02/14/86	Establishing a Contract Administration Program in the Internal Revenue Service (Ref. # 06047)
04/02/86	Review of Procurement Practices in the Buffalo District (Ref. # 66034)
04/30/86	Review of Security and Use of ADP Equipment in the Midwest Region (Ref. # 36026)
05/30/86	More Effective Managerial Controls and Coordination with Customer Functions are Needed in the National Office Contracts and Procurement Branch (Ref. # 06245)
06/13/86	Review of Small Purchase Imprest Fund in the Regional Office (Ref. 66023)
06/24/86	National Computer Center Small Purchases Imprest Fund (Ref. # 06251)
07/02/86	The Small Purchases Imprest Fund in the Cleveland District (Ref. # 46052)
07/18/86	Review of Procurement Practices for Contract Labor Services in the North Atlantic Region (Reg. # 06172)
07/18/86	The Efficiency of the Internal Revenue Service's Administrative Accounting System Can Be Improved (Ref. # 06172)
07/25/86	IRS Compliance With Information Return Filing Requirements (Ref. # 06272)
02/12/86	Review of the Regional Inspector Investigative Imprest Fund and Special Moneys Transactions - Southeast Region (Ref. # 06133)
03/14/86	Regional Inspector Investigative Imprest Fund and Special Moneys Transactions in the Southwest Region (Ref. # 06193)

Date of Report	Title
10/02/85	Improved Refund Review Procedures Would Reduce the Number of Erroneous Employment Tax Refunds Issued (Ref. # 6505R1)
11/01/85	Improving the Returns Processing Activity in the IRS (Ref. # 060213)
12/19/85	IRS Processing of Interest Free 1984 Individual Tax Refunds (Ref. # 06063)
12/31/85	Special Review of the Service's Control Over the Processing of Tax Returns and Documents (Ref. # 060512)
01/24/86	Management Controls in the Service Center Computer Branch Need to be Strengthened (Ref. # 061210)
02/13/86	Review of Account Adjustment and Manual Refund Controls in the New Orleans District Problem Resolution Program (Ref. # 16026)
02/14/86	The Mid-Atlantic Region Needs to Better Implement Their Systems Design to Identify, Communicate and Resolve Processing Problems (Ref. # 86012)
02/25/8	Improving the Quality of Notices in the Internal Revenue Service (Ref. # 060812)
04/01/86	Review of the Taxpayer Service Division's Responsiveness to Taxpayers (Ref. # 06142)
06/19/86	Further Strengthening of Controls Over the Service's Federal Tax Deposit Processing is Needed (Ref. # 062210)
06/25/86	Follow-up Review on the IDRS Terminal Replacement Plan (Ref. # 06202)
07/02/86	Alternatives for Reducing and Resolving Unpostable Transactions (Ref. # 9604R2)
07/10/86	On-Line Review of the Design and Development of the Realtime Input System (Ref. # 06151)
08/05/86	Review of the Service Center Upgrade of Mainframe Processing Systems (SCUMPS) Design (Ref. # 06182)
08/12/86	IRS Test of Commercial Lockbox Processing of Estimated Individual Income Tax Payments (Ref. # 36034)

Date of Report	Title
10/22/85	Improvements Are Needed to Enhance the Effectiveness of the Foreign Information Document Program (Ref. # 05276)
10/31/85	Recovered Mail from Santa Ana Site - Laguna Niguel District (Ref. # 95134)
12/02/85	Evaluation of Internal Controls and Accounting Systems Under the FMFIA for the Year Ended September 30, 1985 (Ref. # 06071)
12/09/85	Review of the IRS Audit Resolution System (Ref. # 06091)
04/29/86	Review of the Service's Abusive Tax Shelter Detection Program (Ref. # 06118)
04/30/86	Service Programs Are Not Effectively Promoting Taxpayer Compliance (Ref. 06104)
09/11/86	Review of Imprest Funds in the San Francisco District (Ref. # 96066)
09/10/86	Taxpayer Service Expanded Adjustment Authority in the Detroit District (Ref. # 46062)
09/16/86	Review of the Taxpayer Service Division's Responsiveness to Taxpayers - Phase II (Ref.# 06265)
09/16/86	Inventory and Management Controls in the Adjustment/Correspondence Branch (Ref. # 16033)
08/27/86	The Service Should Take Steps to Improve Compliance with Return Filing Requirements (Ref. # 06301)
09/12/86	Review of the Automated Collection System (Ref. # 06286)

Date of Report	Title
11/06/85	Review of Processing Refund Freezes for 100% Penalty Cases (Ref. # 96011)
11/13/85	Review of Controls in the Los Angeles District Examination Division (Ref. # 96125)
11/27/85	Review of Collection Activity on Large Dollar Accounts in the Indianapolis District (Ref. # 46011)
12/23/85	Review of Selected Areas in the St. Paul District (Ref. # 36018)
01/13/86	Review of Controls Over Tax Returns in Correspondence Examination in the Atlanta Service Center (Ref. # 16012)
01/15/86	The Service Needs to Reevaluate and Refine Its Use of Installment Agreements as a Collection Tool (Ref. # 060313)
01/31/86	Review of Collection Division in the Wichita District (Ref. # 56012)
03/19/86	Controls Over the Investigative Imprest Fund, Office of Assistant Regional Commissioner (Criminal Investigation), Central Region (Ref. # 46021)
03/21/86	Review of the Investigative Imprest Fund in the Phoenix District (Ref. # 56030)
03/25/86	Controls Were Effective Over Returns Selected for Examination in Central Region (Ref. # 46040)
03/31/86	Property of Seizure and Sale Activities, Detroit and Indianapolis Districts (Ref. # 46030)
04/08/86	Review of Controls in the Seattle District Examination Division (Ref. # 96022)
04/16/86	Controls Over Penalty Abatements Initiated by Revenue Officers (Ref. # 5602R1)
04/30/86	Service Programs Are Not Effectively Promoting Taxpayer Compliance (Ref. # 06104)
05/12/86	Review of the Criminal Investigation Investigative Imprest Fund (Ref. # 06238)
06/17/86	Improvements Needed in the Enforcement of Currency Transactions Reporting and the Use of Currency Data in Compliance Programs (Ref. # 061613)
06/19/86	Review of the Automated Collection System in Western Region (Ref. # 96033)
06/25/86	Review of Offers in Compromise - Western Region (Ref. # 96053)

STATEMENT OF THE HONORABLE HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Mr. Chairman, to be on a bill with you is a great honor and privilege. The State of Arkansas and this nation are well served by your membership in this great body. I also thank you for giving me the opportunity to testify before the subcommittee on the need for the Omnibus Taxpayers' Bill of Rights, Senate bill 604.

This bill does nothing more than provide a legislative remedy to the discourteous, abusive and possibly illegal behavior inflicted upon law-abiding taxpayers by zealous IRS agents.

In short, the Omnibus Taxpayers' Bill of Rights will place the taxpayer on equal footing with the tax collector.

When I was first elected to the Congress in 1982, I knew only of the problems taxpayers were having with the IRS District Office in Las Vegas, Nevada. For over 30 years, the IRS had been concerned with underreporting of tips by casino dealers but had little success in increasing compliance.

Finally, in 1981, after reviewing estimates showing under 15 percent of total tips received by dealers were reported as income, the IRS District Office launched a comprehensive tip compliance program, popularly known as Amnesty, an effort to produce greater compliance with the tax law. The vast, vast majority of the 25,000 dealers in the Las Vegas area agreed to participate in the program, including past tax liabilities in most cases. It seemed for a time the IRS and the dealers had made an agreement benefiting all parties. The Federal Government would increase its revenues, the dealers were given the opportunity to comply with the law without fear of prosecution, and the public perception of dealers as tax cheats would be put to rest.

But after the amnesty period approached, the IRS came after dealers with a vengeance. Due to inconsistent and unfair assessments made by the IRS, many dealers were improperly subjected to levy and seizure and literally driven out of Nevada. At one time, it was estimated that the vast majority of foreclosed homes in the greater Las Vegas area belonged to dealers who had cases with the IRS.

This abusive behavior, violating a compact and maybe even a contract made in good faith, shook taxpayer—not to mention the dealer's—confidence in the IRS in Nevada.

After sharing this anecdote with many of my colleagues in the House, I soon realized they, too, had similar stories to tell. It became clear to me that these stories were more than mere anecdotes. Rather, it became clear to me that the problems Nevadans were having with the IRS were problems taxpayers were experiencing in every State.

Therefore, during the 99th Congress, I introduced my first Taxpayers' Bill of Rights in the House, H.R. 831, to address the problems of IRS abuse. Progress in H.R. 831 was stymied in the House for various reasons but principally because the Ways and Means Committee spent most of the 99th Congress with the Tax Reform Act of 1986.

From the nationwide response I received to my bill, I saw that the need for the legislation was great; and thus I made the Taxpayers' Bill of Rights my number one legislative priority when I came to the Senate. After making my maiden speech, Mr. Chairman, which coincidentally you were chairing the Senate when that was made, and you indicated that you were interested in this subject—which is what the speech was about—you and Senator Grassley offered to work with me on this legislation; and together we introduced the Omnibus Taxpayers' Bill of Rights, legislation based on my House bill but much more comprehensive and much improved due to the input and experience of you and Senator Grassley.

Taken together, the 17 sections of the Taxpayers' Bill of Rights addressed the many concerns brought to my attention by taxpayers from every corner of the country. Mr. Chairman, I have here an expando file that is material that I have developed in inquiries made after introducing my bill in the Senate, just a few short weeks ago. And as you can see, it is quite a pile, coming from all over the country. This consists of letters and other inquiries from around the United States, and these are personal stories about IRS abuses.

Rather than going through all this, for which we do not have the time, I have here a 1987 case reported by Commerce Clearinghouse which shows this is an ongoing problem. I will make this part of the record. I won't read it all, but suffice it to say that a taxpayer owed $1,725.00 in back taxes. The IRS sold their home, which had an equity of $40,000, for $1,725.00. This is a case that is reported in the Commerce Clearinghouse, and with your permission, Mr. Chairman, we will make this part of the record.

Senator PRYOR. Without objection.

[The prepared information follows:]

intended that applications for attorney's fees in the Tax Court be made before final disposition of the case. Since the taxpayer failed to do this, no fees could be allowed. **Back reference: ¶ 6959I.**

[1] *E.M. Sanders*, CA-7, 87-1 USTC ¶ 9214 aff'g unreported Tax Court decision.

[2] 5 U.S.C. § 540(a)(2) and 28 U.S.C. § 2412(d)(1)(B).

[3] Code Sec. 7430.

¶ 21,450 Joint Venture Was At Risk on Obligation

A joint venture was at risk for an obligation it owed indirectly to a bank because it was the ultimate debtor on the loan and the bank did not have an interest in the joint venture other than as a creditor, according to a recent Tax Court case.[1] However, the joint venture was not at risk for a promissory note that ran to persons who had other interests in the joint venture.

A computer equipment leasing corporation obtained a loan from a bank to purchase three check sorters. Subsequently, the corporation sold one of the check sorters to an individual who gave the corporation cash, a recourse promissory note and agreed to repay a portion of the bank loan. The individual sold the check sorter to a joint venture he formed with the taxpayer. The joint venture agreed to pay cash, a recourse promissory note equal to the one the individual had given to the corporation and agreed to pay his obligation for the bank loan.

The court held that the joint venture had the primary, personal and ultimate obligation to repay the bank loan if the lease payments for the check sorter ceased and the underlying security was inadequate. The taxpayer was, therefore, at risk for his share of the bank loan, since the bank had no other interest other than as a creditor. However, the liability for the promissory note ran to either the individual or to the taxpayer, both of whom held interests in the activity other than as creditor, so that the taxpayer was not at risk for the note. **Back reference: ¶ 4259.**

[1] *S.H. Bennion*, 88 TC —, No. 39, CCH Dec. 43,801.

A taxpayer, whose home was sold by IRS agents in satisfaction of past due taxes for less than five percent of its value, could properly bring suit against the agents under the theory of inequitable conveyance, a U.S. District Court in Colorado has recently ruled.[1] In denying the government's motion to dismiss, the court ruled that it may set aside a sale if the sales price was so low as to shock the judicial conscience.

The taxpayer owed the IRS $1,725 in back taxes. The IRS sold the taxpayer's home, valued at over $40,000, for the exact amount of taxes owed. The taxpayer filed suit against the purchaser of the home and the IRS agents who conducted the sale alleging, among other claims, that the failure by the agents to realize or attempt to realize a reasonable price for the property constituted an inequitable conveyance.

In support of its motion to dismiss, the IRS claimed that it was under no duty to sell seized property at its fair or reasonable market value, but must merely take into consideration the taxes owed and the expenses of levy and sale.[2] The taxpayer argued that the IRS, although not bound to obtain the full fair market value of the property, must in good faith attempt to achieve a reasonable price. The court noted that the statutory provision requiring consideration by the IRS of expenses of levy and sale was not the only limitation placed upon sales of property. Although an inadequate price may not give rise to a claim, the court stated that a price so low as to shock the judicial conscience could result in the setting aside of a sale of seized property. **Back reference: ¶ 6837.**

[1] *D.S. Ringer*, DC Colo., 87-1 USTC ¶ 9229.

[2] Code Sec. 6335(e).

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Senator REID. Senate bill 604, I believe is a balanced piece of legislation which seeks to protect taxpayers from IRS abuse while preserving the ability of the IRS to collect taxes which are owed the Federal Government. This bill, Mr. Chairman, is not anti-IRS; it is pro-taxpayer.

This legislation has become necessary only because some of the IRS agents seem to have forgotten the old saying: 'The power to tax is not the power to destroy.' It is my hope that this hearing on the Omnibus Taxpayers' Bill of Rights will remind the IRS of the truth and wisdom contained in this statement. I want to make it clear that I know there are many dedicated IRS personnel. Most of the men and women serving with the IRS have both good manners and good intentions.

But the few who don't cause havoc with the Internal Revenue Service and have created ill will with the public. The public wants this legislation, legislation which is necessary to restore confidence in this nation's tax collecting apparatus. Today, there is no confidence in the tax collecting apparatus of this country.

Mr. Chairman, I want to extend again to you my public appreciation and to Senator Grassley for the assistance that you have provided in this much needed legislation. Mr. Chairman, I again thank you for holding this hearing, the first step in the process of extending the protections of individual liberties found in the first ten amendments to the Constitution to citizens involved in disputes with the IRS.

Senator PRYOR. Senator Reid, thank you very much.

In the House of Representatives, we have a brave young Congressman by the name of Robin Tallon. He is here today. He is the chief sponsor of the Taxpayers' Bill of Rights in the House. Congressman Tallon just informed me that, as of yesterday, I believe, 43 members of the House on both sides of the aisle have signed on as co-sponsors of the Taxpayers' Bill of Rights. We are very honored to have you before this committee, Congressman Tallon. We look forward to your statement this morning.

And you, likewise, will be invited in a few moments to participate with the questioning of our panel which will follow. Congressman Tallon?

[The prepared written statement of Senator Reid and a letter to Senator Reid from the National Taxpayers Union follow:]

TESTIMONY OF SENATOR HARRY REID

before the

SUBCOMMITTEE ON PRIVATE PENSION PLANS AND OVERSIGHT OF
THE INTERNAL REVENUE SERVICE

on the

OMNIBUS TAXPAYERS' BILL OF RIGHTS, S.604

April 10, 1987

MR. CHAIRMAN, TO BE ON A BILL WITH YOU IS A GREAT HONOR AND PRIVILEGE. THE STATE OF ARKANSAS AND THIS NATION ARE WELL SERVED BY YOUR MEMBERSHIP IN THIS GREAT BODY. I ALSO THANK YOU FOR GIVING ME THE OPPORTUNITY TO TESTIFY BEFORE THE SUBCOMMITTEE ON THE NEED FOR THE OMNIBUS TAXPAYERS' BILL OF RIGHTS, S.604. THIS BILL DOES NOTHING MORE THAN PROVIDE A LEGISLATIVE REMEDY TO THE DISCOURTEOUS, ABUSIVE AND POSSIBLY ILLEGAL BEHAVIOR INFLICTED UPON LAW-ABIDING TAXPAYERS BY ZEALOUS IRS AGENTS. IN SHORT, THE OMNIBUS TAXPAYERS' BILL OF RIGHTS WILL PLACE THE TAXPAYER ON EQUAL FOOTING WITH THE TAX COLLECTOR.

WHEN I WAS FIRST ELECTED TO CONGRESS IN 1982, I KNEW ONLY OF THE PROBLEMS TAXPAYERS WERE HAVING WITH THE IRS DISTRICT OFFICE IN LAS VEGAS. FOR OVER 30 YEARS THE IRS HAD BEEN CONCERNED WITH UNDERREPORTING OF TIPS BY CASINO DEALERS, BUT HAD LITTLE SUCCESS IN INCREASING COMPLIANCE. FINALLY IN 1981, AFTER REVIEWING ESTIMATES SHOWING UNDER 15 PERCENT OF TOTAL TIPS RECEIVED BY DEALERS WERE REPORTED AS INCOME, THE IRS DISTRICT OFFICE LAUNCHED A COMPREHENSIVE TIP COMPLIANCE PROGRAM (POPULARLY KNOWN AS "AMNESTY") IN AN EFFORT TO PRODUCE GREATER COMPLIANCE WITH THE TAX LAW. MOST OF THE 25,000 DEALERS IN THE LAS VEGAS AREA AGREED TO PARTICIPATE IN THE PROGRAM INCLUDING MEETING PAST TAX LIABILITIES IN SOME CASES.

IT SEEMED FOR A TIME THE IRS AND THE DEALERS HAD MADE AN AGREEMENT BENIFITTING ALL PARTIES. THE FEDERAL GOVERNMENT WOULD INCREASE ITS REVENUES; THE DEALERS WERE GIVEN THE OPPORTUNITY TO COMPLY WITH THE LAW WITHOUT FEAR OF PROSECUTION; AND THE PUBLIC PERCEPTION OF DEALERS AS "TAX CHEATS" WOULD BE PUT TO REST. BUT AFTER THE AMNESTY PERIOD EXPIRED, THE IRS CAME AFTER DEALERS WITH A VENGEANCE. DUE TO INCONSISTENT AND UNFAIR ASSESSMENTS MADE BY THE IRS, MANY DEALERS WERE IMPROPERLY SUBJECTED TO LEVY AND SEIZURE AND DRIVEN OUT OF NEVADA. AT ONE TIME IT WAS ESTIMATED THAT THE VAST MAJORITY OF FORECLOSED HOMES IN THE GREATER LAS VEGAS AREA BELONGED TO DEALERS WHO HAD LOST CASES WITH THE IRS. THIS ABUSIVE BEHAVIOR, VIOLATING A COMPACT MADE IN GOOD FAITH, SHOOK TAXPAYER--NOT TO MENTION DEALER--CONFIDENCE OF THE IRS IN SOUTHERN NEVADA.

AFTER SHARING THIS ANECDOTE WITH MY COLLEAGUES IN THE HOUSE, I SOON REALIZED THEY TOO HAD SIMILAR STORIES TO TELL. IT BECAME CLEAR TO ME THESE STORIES WERE MORE THAN MERE ANECDOTES. RATHER, IT BECAME CLEAR TO ME THE PROBLEMS NEVADANS WERE HAVING WITH THE IRS WERE PROBLEMS TAXPAYERS WERE EXPERIENCING IN EVERY STATE. THEREFORE, DURING THE 99TH CONGRESS I INTRODUCED MY FIRST TAXPAYERS' BILL OF RIGHTS IN THE HOUSE, H.R.831, TO ADDRESS THE PROBLEM OF IRS ABUSE.

PROGRESS ON H.R. 831 WAS STYMIED IN THE HOUSE FOR VARIOUS REASONS, BUT PRINCIPALLY BECAUSE THE WAYS AND MEANS COMMITTEE SPENT MOST OF THE 99TH CONGRESS WITH THE TAX REFORM ACT OF 1986. BUT FROM THE NATIONWIDE RESPONSE I RECEIVED TO MY BILL, I SAW THAT THE NEED FOR THIS LEGISLATION WAS GREAT, AND THUS I MADE THE TAXPAYERS' BILL OF RIGHTS MY NUMBER ONE LEGISLATIVE PRIORITY IN THE SENATE. AFTER MAKING MY MAIDEN SPEECH IN THE SENATE ON THE NEED FOR A TAXPAYERS' BILL OF RIGHTS, SENATORS PRYOR AND GRASSLEY OFFERED TO WORK WITH ME ON THIS LEGISLATION AND TOGETHER WE INTRODUCED THE OMNIBUS TAXPAYERS' BILL OF RIGHTS; LEGISLATION BASED ON MY HOUSE BILL, BUT MUCH MORE COMPREHENSIVE AND MUCH IMPROVED DUE TO THE INPUT OF SENATORS PRYOR AND GRASSLEY.

TAKEN TOGETHER, THE 17 SECTIONS OF THE TAXPAYERS' BILL OF RIGHTS ADDRESS THE MANY CONCERNS BROUGHT TO MY ATTENTION BY TAXPAYERS FROM EVERY CORNER OF THE COUNTRY. THIS BOX IS FULL OF LETTERS I HAVE RECEIVED FROM TAXPAYERS ACROSS THE COUNTRY RELATING THEIR OWN PERSONAL STORIES OF TAXPAYER ABUSE BY THE IRS, AND CONTAINING WORDS OF SUPPORT FOR THE TAXPAYERS' BILL OF RIGHTS.

S.604 IS A BALANCED PIECE OF LEGISLATION WHICH SEEKS TO PROTECT TAXPAYERS FROM IRS ABUSE WHILE PRESERVING THE ABILITY OF THE IRS TO COLLECT TAXES WHICH ARE LEGALLY OWED THE FEDERAL GOVERNMENT. THIS BILL IS NOT ANTI-IRS IT IS PRO-TAXPAYER. THIS

LEGISLATION HAS BECOME NECESSARY ONLY BECAUSE SOME AGENTS OF THE IRS SEEM TO HAVE FORGOTTEN THE OLD SAYING, "THE POWER TO TAX IS NOT THE POWER TO DESTROY". IT IS MY HOPE THAT THIS HEARING ON THE OMNIBUS TAXPAYERS' BILL OF RIGHTS WILL REMIND THE IRS OF THE TRUTH AND WISDOM CONTAINED IN THIS STATEMENT.

I WANT TO MAKE IT CLEAR THAT I KNOW OF THE MANY DEDICATED IRS PERSONNEL--MOST OF THE MEN AND WOMEN SERVING WITH THE IRS HAVE BOTH GOOD MANNERS AND GOOD INTENTIONS. BUT THE FEW WHO DON'T CAUSE HAVOC WITH THE INTERNAL REVENUE SERVICE AND HAVE CREATED ILL-WILL WITH THE PUBLIC. THE PUBLIC WANTS THIS LEGISLATION, LEGISLATION WHICH IS NECESSARY TO RESTORE CONFIDENCE IN THIS NATION'S TAX COLLECTING APPARATUS. TODAY, THERE IS NO CONFIDENCE.

MR. CHAIRMAN, I WANT TO EXTEND MY PUBLIC APPRECIATION TO BOTH YOU AND SENATOR GRASSLEY FOR THE ASSISTANCE YOU HAVE PROVIDED ME ON THIS BILL. MR. CHAIRMAN, I THANK YOU FOR HOLDING THIS HEARING ON THE OMNIBUS TAXPAYERS' BILL OF RIGHTS, THE FIRST STEP IN THE PROCESS OF EXTENDING THE PROTECTIONS OF INDIVIDUAL LIBERTIES FOUND IN THE FIRST TEN AMENDMENTS OF THE CONSTITUTION TO CITIZENS INVOLVED IN DISPUTES WITH THE IRS.

NATIONAL TAXPAYERS UNION

A NONPARTISAN, NONPROFIT ORGANIZATION DEDICATED TO THE PUBLIC INTEREST

325 PENNSYLVANIA AVENUE, SOUTHEAST WASHINGTON, DISTRICT OF COLUMBIA 20003 TELEPHONE: AREA CODE 202/543-1300

May 14, 1987

Senator Harry Reid
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

Thank you for your letter of April 19th. I appreciated the opportunity to appear before the Senate Finance Committee Subcommittee on Oversight of the Internal Revenue Service, and hope that my suggestions and recommendations are helpful in creating constructive rights for taxpayers. My experience at the IRS and as an enrolled agent representing taxpayers from all over the country makes me beleive that a Taxpayers' Bill of Rights is long overdue.

In response to the questions in your letter, I offer the following answers:

#1. The Internal Revenue Service does consider the Internal Revenue Manual (IRM) their "Bible" of operations. It establishes National Office policies and procedures and gives IRS employees directions to take on cases while defining options and alternatives. Many of IRS's policies are defined in the IRM but are not so defined in IRS regulations. This does leave a gap in protecting taxpayers as neither the IRS nor the courts confer any substantive taxpayer rights due to the IRM.

One of the major problems in IRS's collection authority as outlined in the IRM is that it does not define the circumstances and situations under which enforcement action will or will not be taken. The IRS has always taken the position that they cannot do this because they want to leave enforcement discretion in the hands of the collection employee working the case. Because no two collection employees or even collection supervisors are going to work the same case the same way, no taxpayer or taxpayer representative can ever be sure how the case will be worked. The subjective variables pertain to such important questions as: How long do I have to raise the money? (This can vary from no time at all to months.) Can I pay these taxes off in installments? (The answer may depend more on the personal philosophy of the group manager who may not approve of installment agreements even though National policy is to allow them.) What assets are you going to seize and when? (This may depend more on what assets are "easy" for the Revenue Officer to seize.)

It is the exercise of this discretion that leads to abusive activity. It is my opinion and that of other good Revenue Officers I know that a high seizure rate is NOT the mark of a good Revenue Officer. It is in fact the mark of an employee who does not have good communication skills and one who has little regard for the impact on the taxpayer of those actions.

While the National Office is fond of saying that seizures are "a last resort," they have never defined that policy in any written manner. It is not a policy statement and it cannot be found anywhere in the IRM. Until the IRS can actually define the circumstances and situations under which seizures will and will not occur, arbitrary and capricious actions which give rise to abuses will continue.

This lack of definition definitely poses problems for taxpayers and their representatives. Most collection employees are unwilling to be helpful to a taxpayer until it is clear from an analysis of the taxpayer's financial statement that the IRS has no other option. This boils down to a question of "leverage." What options are available to a taxpayer depends on whether he has assets that can be seized. Sometimes the assets are not subject to distraint but the Revenue Officer may threaten seizure anyway. Sometimes the taxpayer does not have the capability of utilizing his assets to raise cash (e.g., a tax lien may prohibit refinancing a home, or the taxpayer may not have the income stream to carry a heavier debt load) but yet the Revenue Officer will demand that the taxpayer do so anyway, totally ignoring the realities of the marketplace.

As a taxpayer representative I find that the number of ways in which a collection employee can "jerk you around" with unreasonable demands, violations of IRM policies, and subjective unfounded analyses are innumerable. I find it very frustrating to try and play by the rules as outlined in the IRM only to find that the IRS employee doesn't even know the rules and could care less. On a number of occasions I have actually had to photocopy portions of the IRM and send them to an IRS employee. (In one instance I was actually told by an auditor that I could not represent one spouse of a couple who had filed a joint tax return. The auditor demanded that I prove to her that I was entitled to represent only one spouse, rather than she proving to me that I couldn't. Even when I gave her the citation from the Regulations she claimed that citation didn't exist.)

Apparently, the Collection Division does not hold collection employees accountable for all portions of the IRM. There are procedures in the IRM that are more important than others and employees know they better not violate them. For example, IRM 5355.11:(2) states:

"The responsible employee will make a reasonable effort to contact the taxpayer, in person, by telephone, or by notice sent by certified mail, delivered in person, or left at the taxpayer's last known address, before filing a notice of lien. (See P-5-47). The employee should afford the taxpayer the opportunity to make payment and should explain the effect that the filing of a notice of lien could have on normal business or credit operations..."

IRM 5355.12:(2) states:

"A lien filing determination and lien filing, as appropriate, must be made by a revenue officer on all cases of $500 or more as soon as possible after taxpayer contact by telephone or attempted or actual

field contact. If contact or attempted contact cannot be made within the time frame established by local management a lien determination and lien filing, if appropriate, must be made. A lien may be filed if a certified notice has been sent to the taxpayer."

Notice that the first passage requires a "reasonable effort" be made to contact the taxpayer first, before filing a tax lien. The second passage requires either a lien determination or a lien filing within a locally defined time frame (usually 30 days). A lien determination allows the revenue officer the discretion to NOT file a tax lien if under Exhibit 5300-4 filing the line will "impair collection of the liability."

What frequently happens is that NO attempts (much less reasonable attempts) are made to contact the taxpayer first before filing the lien. The Revenue Officer knows that he has a time frame within which the lien must be filed and if he doesn't file within that time frame, he will be written up for it. But if he violates the first passage nothing will be said to him. It's presumed to be okay to not contact the taxpayer first as long as the lien is filed according to local guidelines.

When Revenue Officers are under pressure because of a heavy caseload they are more apt to violate the first provision. Occasionally a lien filing will impair the taxpayer's ability to pay, but Revenue Officers are usually unconcerned about that because no Revenue Office has ever gotten into trouble for actually filing the lien, whereas the reverse is true.

Also, few Revenue Officers even know that the lien filing determination requirement gives them the option to NOT file a lien. Very few group managers will support a decision to not file a lien. Everyone is more concerned with "protecting the government's interest" by filing than by nonfiling.

#2. As I mentioned earlier some provisions of the IRM are more important than others. Collection employees are more likely to get into trouble for not filing a lien, or not making a seizure than they are for working with a taxpayer to pay the liability. Sometimes alternatives are available for collection but group managers pressure their Revenue Officers to close cases as quickly as possible, and this usually means a seizure.

Occasionally the IRS will fire or attempt to fire an employee for violating the IRM. But my experience is that there are other reasons why the employee is being fired, and very rarely are sanctions levied unless there is gross incompetence or an integrity problem.

To determine the extent of personnel actions against employees violating the IRM I suggest you contact the National Treasury Employees Union. They are probably better qualified to give you a better answer.

However, I do want to point out that an employee violation of the

IRM is NOT a matter for investigation by IRS's Internal Security (Inspection) Division. The IRS considers it a management problem and is handled as a personnel matter. Breaches of the IRM are not necessarily integrity problems, the types of problems handled by IRS's Inspection. Most likely the statistics of personnel actions cited by the IRS relate to integrity problems and not violations of the IRM.

#3. In my book The Power to Tax (National Taxpayer's Legal Fund, 1983) I outlined 17 recommendations for changing the Internal Revenue Code to give taxpayers more rights. Recommendations #13 (pages 84 and 85) and #15 (pages 86 and 87) relate to this question. (copies attached).

I believe that a politically appointed Ombudsman should be maintained within the IRS who would have the right to intervene in any enforcement proceeding or activity when at least one of the following conditions exist:

- There has been an improper or possibly illegal assessment.
- There has been an assessment made without the knowledge of the taxpayer and without benefit of the taxpayer's appeal rights.
- There has been an action in violation either of the statutory procedures of the Tax Code, the policies or regulations of the IRS, or the procedural requirements specified in the Internal Revenue Manual.

Secondly, I believe that Congress should grant certain taxpayers the right to file suit in a federal District Court either prior to levy, or subsequent to levy when specific circumstances exist. Those circumstances are listed in recomendation #13, but note that the above appeal criteria to the Ombudsman are included as some of the grounds under which a federal court appeal could be made. Presently, the Anti-Injunction statute, section 7421(a) of the Internal Revenue Code, limits the ability of taxpayers to seek outside equity. I believe that these two recommendations would go a long way to resolving many of the grievances that taxpayers have with IRS's collection powers, and would help to ensure that IRS employees abide by IRS policies and procedures.

I want to thank you again for giving me the opportunity to present my views before the Subcommittee. I hope that we can obtain the reform necessary so that all taxpayers will be treated fairly and equitably in the future. Americans know that they have tax responsibilities and all they ask is that the IRS plays by the rules. Many find it very frightening to learn that all the democratic and American precepts of "being innocent before proven guilty" and being protected against "unreasonable searches and seizures" don't seem to apply to them when dealing with the IRS. What better way to celebrate the Bicentennial of the United States Constitution than to enact a viable, effective, Taxpayers' Bill of Rights!

Sincerely,

Jack Warren Wade Jr.

Jack Warren Wade, Jr.

DK7:33

and that seizure is the next action might reduce seizures," and thereby "save both IRS and the taxpayers time, trouble, and expense."

Taxpayers currently have the right, under an *informal* process, to appeal a revenue officer's decisions concerning payment options proposed, a rejection of an offer in compromise, or the decision to seize. When taxpayers reach an impasse with revenue officers regarding their ability to pay, IRS guidelines provide that taxpayers be given an opportunity to request a review by a group manager (IRM 53(10)2).

If taxpayers do not request a higher level review of their case, revenue officers are supposed to inform them of their right to appeal. However, the GAO discovered that revenue officers were not following those instructions in some districts, and recommended that revenue officers in all districts need to substantially improve their performance in advising taxpayers of this right.

RECOMMENDATION #13:

Congress should grant certain taxpayers the right to file suit in a federal District Court subsequent to levy by adopting the following provision:

> A taxpayer may file suit in a U.S. District Court, prior to levy, to enjoin the Secretary from making a levy, or subsequent to levy to enjoin the Secretary from selling such property levied upon, and to obtain a release of levied property by reasons that: the deficiency assessment was made without knowledge of the taxpayer and without benefit of the appeal procedure; or there has been an improper or illegal assessment; or there has been an action in violation either of the statutory procedures of the Tax Code, the policies or regulations of the Internal Revenue Service, or the procedural requirements of the Internal Revenue Manual providing taxpayer safeguards; or the Secretary has made an unlawful determination that collection of the tax was in jeopardy pursuant to Section 6331(a); or the value of seized property is out of proportion to the amount of the liability, and other collection remedies are available; or the value of the U.S. interest in the seized property is insufficient to meet the expenses of seizure and sale; or the Secretary will not release the seized property upon an offer of payment of the U.S. interest in the property; or the Secretary has arbitrarily established a minimum bid price on the seized property in such a way as not to preserve or protect the taxpayer's equity in the seized property.

Reasons for Change:

Under IRC 7421 no suit can be brought by any person in any court for the purpose of restraining the assessment or collection of any tax, except as provided in sections: 6212(a), relating to notice of deficiency; 6213(a), relating to the 90-day letter; 6672(b), relating to suits for determining

penalty; 7426(a), relating to wrongful levies; 7426(b)(1), relating to irreparable injuries to superior rights of the U.S.; and 7429(b), relating to appeal of jeopardy assessment procedures.

The case law pertaining to Section 7421 indicates a myriad of problems in obtaining injunctions to restrain the collection of the tax. It is clear that injunctions will be granted where the failure to grant relief would result in irreparable damage to the taxpayer. But an injunction will only be allowed where it is clear that under no circumstances would the government prevail. Otherwise, only two remedies are available to the taxpayer: (1) pay the tax, file a claim for refund, and sue for recovery if the claim is rejected; (2) file a Petition in Tax Court before assessment and within the short period of time allowed for filing such petition.

Taxpayers' rights should be protected in other ways, and Section 7421(a) should be amended to provide for such protection. The issues enumerated in the proposal pertain mostly to the application of the levy statutes in a way that may have as much of a detrimental or deleterious impact upon taxpayers as the illegality or irreparable injury issues.

RECOMMENDATION #14:

Congress should adopt a provision to allow taxpayers to administratively appeal a decision of the Collection Division to file a Notice of Federal Tax Lien when such filing would hamper or jeopardize collection of the tax.

Reasons for Change:

IRM 5426.1:(1) allows revenue officers the discretion to decide not to file a Notice of Federal Tax Lien when "the filing of a notice of lien would hamper collection." The revenue officer is supposed to be free to make his nonfiling decision if the balance due is under $2,000, and he is not even required to record the reasons why in the history sheet. If the case is between $2,000 and $5,000, the revenue officer must record the reasons for the nonfiling in the case history sheets, and no managerial approval is necessary (according to the IRM but some districts give the group manager approval authority anyway). Approval for nonfiling is required only when the case is over $5,000.

It was revealed during the Levin hearings, and I know this to be a fact, that in many districts revenue officers file Notices of Federal Tax Liens without regard for what it may do to the taxpayer's ability to borrow the money to pay the taxes. There are times when it is absolutely necessary that the tax lien *not* be filed in order not to disturb the ability of a financial institution to advance funds to the taxpayer. The issue of tax lien priorities is a very complex one often requiring litigation to untangle. Lenders are sometimes reluctant to advance funds to delinquent taxpayers unless they can be assured the IRS will not immediately enforce its lien priority.

Revenue officers also testified during the Levin hearings that some group managers or branch chiefs would frequently deny their requests for nonfiling of the tax lien for no apparent reason. While this arbitrary enforcement philosophy is used by these managers on the pretext of protecting the government's interest, in fact they are actually jeopardizing the government's potential to collect tax money in the most efficient way. There are times when the government can collect more by helping the taxpayer work through his difficult periods and stay in business than by putting him out of business and selling his assets at nominal value. Sometimes the nonfiling of a tax lien is crucial to preservation of the business.

Taxpayers who can provide evidence that the filing of a Notice of Federal Tax Lien would hamper the collection of the tax ought to be able to administratively appeal the decision to file. Naturally, the appeal should be made outside of the Collection Division to an impartial source like the Ombudsman (more specifically the PRP officer) who could issue a Stop Action Order to temporarily delay filing the lien.

RECOMMENDATION #15:

Congress should require the IRS to issue a "Miranda-type" warning to taxpayers during any interview in connection with the assessment of a deficiency. The taxpayer should be warned that he has the right not to disclose any information or evidence that he believes would violate his Fifth Amendment rights against self-incrimination, that any such information or evidence would be used against him, and that he has the right to the presence of an attorney, a CPA, or an enrolled agent during the interview or examination.

Reasons for Change:

An audit is a civil procedure even though it can be the prelude to a criminal investigation and courts in the past have not applied the Miranda warnings to civil procedures. A taxpayer can be caught in a different situation: he has no choice but to cooperate with the tax auditor, unless he is willing to subject himself to any amount of additional assessment that the IRS might otherwise propose.

A taxpayer who cooperates with the IRS, and who has committed no fraudulent act, only incurs the possibility of additional tax assessments, interest, and various civil penalties. A taxpayer who cooperates with the IRS and who has committed a fraudulent act, subjects himself to possible criminal prosecution by self-incrimination.

Any taxpayer who does not cooperate with a tax auditor or revenue agent immediately arouses suspicion. The auditor can decide to either summons the taxpayer's books and records or to refer the case to the Criminal Investigations Division to determine if there is the potential for a fraud prosecution. Either way the taxpayer loses because a federal judge

can require the taxpayer to produce the books and records under threat of contempt of court, and the Criminal Investigations Division might "scare" the taxpayer sufficiently to comply. The taxpayer might well imagine the IRS making a fraud case of a situation that was not initially intended to be.

But taxpayers do need to know that any normal, routine civil audit may lead to a potential fraud investigation which may turn into a criminal prosecution. The Fifth Amendment protection against self-incrimination should give a taxpayer the opportunity to decide if he will cooperate. The penalty for a contempt of court citation may be preferable to the penalties levied for fraud. At any rate, a lot of IRS's criminal prosecutions are successful because they are able to obtain evidence granted to them through the initial cooperation of the taxpayer.

The IRS is concerned that giving taxpayers the Miranda warnings will unnecessarily frighten and worry them. Taxpayers have seen it on TV a million times; the warnings are always given to the criminal as he's being hauled off to jail. This perception will certainly cause many "honest" taxpayers to be more concerned than they need to be. While the intention of the safeguard warning provision is to expand the rights of taxpayers, in doing so it actually instills such fear of the IRS that it could actually result in a severe detriment to them. After being audited once and subjected to the Miranda warnings, honest middle-class taxpayers may then decide to take fewer deductions than they would normally take or be entitled to, with the explicit intention of avoiding an audit.

I believe that there is a way to fulfill the need of taxpayers to know, to maintain their Fifth Amendment rights, and yet not frighten them needlessly. The Congress should consider the adoption of a statement that conveys a message that is instructive and protective, but not overbearing, harsh, or frightening. It could be something like this:

> This examination of your tax return is intended for the civil administration of the tax laws of the United States. In order for us to perform this function properly, we need your cooperation. But you should know that in the event we find evidence that appears to indicate a criminal violation of the tax laws, the scope of this audit examination will change from civil to criminal. If that happens you will be notified. Anything you tell us or any books and records you give us during the course of this audit examination may later be used in the investigation of the alleged criminal violation. For this reason you have the right not to disclose any information or evidence that you believe would violate your Fifth Amendment rights against self-incrimination; any such information or evidence may be used against you, and you have the right to the presence of an attorney, a CPA, or an enrolled agent during this interview, or examination.

STATEMENT OF THE HONORABLE ROBIN TALLON, MEMBER, U.S. HOUSE OF REPRESENTATIVES, FROM THE STATE OF SOUTH CAROLINA

Congressman TALLON. Mr. Chairman, thank you, Senator Grassley, Senator Reid. I do appreciate the opportunity to appear here this morning to discuss the Taxpayers' Bill of Rights. I am pleased to report that our co-sponsors of the identical legislation in the House number 48.

Mr. Chairman, I realize you have a number of witnesses today, and I am not going to go into the specifics of the legislation. I would, however, like to start with a brief description found in our Government manual, which states, and I quote:

> The IRS mission is to collect the proper amount of tax revenue at the least cost to the public in a manner that warrants the highest degree of public confidence in our integrity, efficiency, and fairness.

But Mr. Chairman, listen to some of the comments that I have received from the citizens that we have been elected to serve.

> The power of the IRS seems to be exercised not for the purpose of collecting taxes or prosecuting guilty individuals, but to render taxpayers financially incapable of using their assets to defend themselves.
>
> The IRS seems to ignore our laws, its regulations, and the rules of decency.
>
> During the interview when I was audited, I was made to feel like a criminal of the worst type.

From a current IRS employee:

> They are pressuring us to produce more and more audits and more and more dollars of tax per audit. The IRS is increasing production quotas, demanding quantity not quality.'

Even in a well-publicized case, the IRS spokesman said of a telephone collection practice by employees, and I quote again:

> They are pretty hard-nosed. That is their job.

Mr. Chairman, these comments do not reflect the proper balance of the Government's right to collect taxes with the individual rights of taxpayers, including due process of law, right to counsel, the presumption of innocence, and other rights normally and commonly afforded individuals in virtually any other type of proceeding in our State and Federal courts.

In a well-noted Supreme Court decision in 1819, Chief Justice John Marshall wrote: 'The power to tax involves the power to destroy." But he went on to say that "carrying taxation to the point of destruction would be an abuse that would in turn destroy the confidence of the people in their Government." Mr. Chairman, the IRS as part of the Federal Government must function within the guidelines of fairness and decency; and to restore confidence in the system of collecting taxes, we need to enact the Taxpayers' Bill of Rights.

Americans across this country do not object to paying a fair share of taxes to operate the Government, but they do object and rightly so to the heavy-handed tactics in the collection of these taxes that sometimes appear to violate the freedoms guaranteed in the Constitution. If taxes are the price we pay for a civilized society, let us make sure that they are collected in a civil manner.

Thank you very much, Mr. Chairman.

Senator PRYOR. Congressman Tallon, thank you, and we thank all of our members of the Senate and also you, Congressman Tallon, from the House; and we are very indebted to you for handling this and trying to get more co-sponsors on the Taxpayers' Bill of Rights in the House.

Now, I would like to ask Senator Grassley, Senator Reid, and Congressman Tallon to come and sit at the committee table. We will call our first panel this morning.

Mr. Thomas Treadway, a taxpayer of Piperville, Pennsylvania; Ms. Elaine Mittleman, a former Treasury employee from Falls Church, Virginia; and Mr. Joseph Smith, Jr., former Internal Revenue Service employee of Las Vegas, Nevada.

Mr. Treadway, we appreciate your coming this morning and we do all of the witnesses, particularly the other two of you on this particular panel. Of the many hundreds of cases that we have heard about, we have chosen three this morning from taxpayers to sort of represent some of the broad problems that we—members of the House and members of the Senate—are concerned about with the Internal Revenue Service and the relationship to the American taxpayer. Each of you represent a unique situation or a unique problem, and we very much appreciate your being here. We hope it will not further jeopardize you in the future, and I must say you are very courageous to come before this committee this morning.

Mr. Treadway?

[The prepared written statement of Congressman Tallon follows:]

STATEMENT OF CONGRESSMAN DAVID CALLAN

Mr. Chairman, Members of the Subcommittee, I appreciate the opportunity to appear this morning to discuss the Taxpayers' Bill of Rights. I am pleased to report that I have cosponsored the identical bill in the House which already has 48 cosponsors.

Mr. Chairman, I realize you have a number of witnesses today, so I am not going into the specifics of the legislation.

I would, however, like to start with a brief description found in our government manual which states that "the IRS mission is to collect the proper amount of tax revenue at the least cost to the public in a manner that warrants the highest degree of public confidence in our integrity, efficiency and fairness."

But listen to some of the comments I have received from the citizens we have been elected to serve:

" . . . the power of the IRS seems to be exercised not for the purpose of collecting taxes or prosecuting guilty individuals, but to render taxpayers financially incapable of using their assets to defend themselves . . ."

" . . . the IRS seems to ignore our own laws, its regulations and the rules of decency . . ."

" . . . during the interview when I was audited, I was made to feel like a criminal of the worst type . . ."

From a current IRS employee, " . . . they are pressuring us to produce more and more audits and more dollars of tax per audit. The IRS is increasing production quotas demanding quantity, not quality."

Even in a recently well-publicized case, the IRS spokesman said of the telephone collection employees, "They're pretty hard-nosed. That's their job."

Mr. Chairman, these comments do not reflect the proper balance of the government's right to collect taxes with the individual rights of taxpayers, including due process of law, right to counsel, the presumption of innocence and other rights normally and commonly afforded individuals in virtually any other type of proceedings in our state and federal courts.

In a well-noted Supreme Court decision in 1819, Chief Justice John Marshall wrote, "the power to tax involves the power to destroy."

But he went on to state what is not as often quoted, "Taxation does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which, would banish that confidence which is essential to all government."

Mr. Chairman, the IRS, as part of the federal government, must function within the guidelines of fairness and decency. And to restore public confidence in the system of collecting taxes, we need to enact the Taxpayers' Bill of Rights.

Americans across this country do not object to paying a fair share of taxes to operate the government, but they do object and rightly so, to the heavy-handed tactics in the collection of these taxes that sometimes appear to violate the freedoms guaranteed by the Constitution.

If taxes are the price we pay for a civilized society, let us make sure they are collected in a civil manner.

Thank you, Mr. Chairman.

STATEMENT OF THOMAS L. TREADWAY, TAXPAYER, PIPERSVILLE, PA

Mr. TREADWAY. Mr. Chairman, my name is Thomas L. Treadway, and I am from Pipersville, Pennsylvania. Mr. Chairman, you are looking at a man that the IRS totally destroyed. For five years, I have been totally consumed with a nightmare, a nightmare that began with a seemingly routine IRS audit but turned into a jeopardy and termination assessment and a seizure of my companion and friend's bank accounts. The IRS seized over $22,000 of Shirley Lojeski's bank account for my alleged tax deficiencies, using my Social Security number to do so.

In December 1979, Revenue Agent Richard Boandl began an audit of my 1977 tax return. During 1981, he began auditing me for 1978, 1979, and 1980. In February 1982, Mr. Boandl proposed an assessment of $247,000, including penalties and interest. I refused to accept his findings and, the next thing I knew, they had already assessed the tax and started seizure actions.

Agent Boandl subsequently testified in court that, because I was involved in the sale of some real estate holdings, he believed that I was liquidating my assets to the detriment of the Government and distributing the proceeds to my friend, Shirley Lojeski. On this speculation, Agent Boandl received permission from his supervisor to do a jeopardy assessment and a termination assessment against me.

Subsequently, Officer George Jessup began jeopardy seizure actions on August 3, 1982; I was presented with assessment notices for $247,000. Officer Jessup stated that he was doing this because of apparent dissipation of my assets while I was being audited. On the same day, he filed a tax lien against me and another one against Shirley.

Revenue Officer Jessup's history sheets, which we obtained through the Freedom of Information Act, stated that he was proceeding without the approval of IRS legal counsel because he feared the Government would lose revenues.

Officer Jessup's history sheet showed that he merely assumed that money had been transferred from me to Shirley because a cursory review of her tax returns showed operating losses. He wondered how she could be making mortgage payments without my help. His notes state that that fact is "probably what made this case go so far."

Officer Jessup even lied to Shirley's banks that the IRS had evidence that I was concealing funds in her name. He even told the banks the IRS would take the brunt of any wrongful levy action. He had all her funds seized even though she did not owe any taxes, and there was no evidence that I was concealing any funds in her name.

Even though he filed a tax lien against her property and seized her life savings, he never gave her notice or an opportunity to challenge the levy or the lien on her property.

It is clear, even though she was an innocent party, she had no rights in this matter at all. At least, I had a 30-day appeal right. Revenue Officer Jessup took all of these actions on his own, with-

out any approval from IRS legal counsel as required by the Internal Revenue Manual.

In court, Jessup repeatedly testified that he didn't need authority from any superior to do what he did and that he alone could make that determination. The U.S. District Court of the Eastern District of Pennsylvania ruled that Agent Boandl and Officer Jessup failed to show that they had a reasonable ground for belief and a good faith belief that their actions were fully in accordance with the law and regulations.

As a result of the seizure of Shirley's life savings and her property, she lost her health and life insurance policies because she did not have the money to pay the premiums. She was threatened with foreclosure of her real estate because she couldn't make the mortgage payments. She couldn't run her horse business because she couldn't afford to buy feed and other items. She was sued by a supplier because she couldn't pay the bills. She had to borrow money to buy her groceries and to make her mortgage payments.

She was humiliated and degraded and became withdrawn. She wouldn't leave her farm because she was ashamed to meet people and for fear that Officer Jessup would come back to the farm and seize all of her personal property.

I filed an appeal of this assessment right away and, while the appeals conference was pending, Revenue Officer Jessup told my attorneys that he would not back away from further seizure actions. On September 23, 1982, IRS Appeals Officer John Percaccio, after reviewing the case, ruled that the entire $247,000 tax assessment against me was unreasonable and abated the entire deficiency back to zero.

It was later at a subsequent audit that we agreed we owed $11,000 for the minimum tax, which wasn't even part of the original jeopardy assessment. Not only was the entire $247,000 jeopardy assessment unreasonable, the IRS never proved in court that there were any facts substantiating the jeopardy and termination actions. Agent Boandl testified that he never checked the real estate records, nor did he know of any funds I may have received from the sale of properties sold in March and June of 1982. In fact, I received no funds. It all went to the banks to pay off mortgages.

The outrageous and arbitrary actions of Agent Boandl and Officer Jessup have ruined our lives. August 3, 1982 is a day that will go to my grave with me. Even when the abatement was directed by the Appeals Officer, Agent Boandl and Officer Jessup refused to back down. They kept threatening to do the whole thing all over again.

The IRS took four months to get Shirley's money back to her; and when her attorney called to complain of the delay, Officer Jessup told them that he resented the pressure to release the lien and refund the money. Even when the IRS continued stalling in refunding Shirley's money, Officer Jessup wrote in his history sheets that he was not overly concerned. Officer Jessup was so obsessed with the harassment of me that he tried to contrive an excuse to start seizure actions all over again.

While I was out of town for a family funeral for four of my family members who had died in a fire, he wrote that I had apparently skipped the area and could not be located.

To this day, I have to contend with more audits, harassment, and surveillance from Agent Boandl.

What I have learned since this has happened to me is that taxpayers have no rights in dealing with the IRS. We are totally at their mercy. You can murder 10 people and you are innocent until the State spends taxpayers' money and proves you guilty. In this case, we are guilty without any hearing or any due process. The IRS did what they did without any internal management protection or any protection from the court. Even common criminals have more rights.

At least the police need a search warrant first before seizing a taxpayer's property. The IRS is allowed to seize anything they want any time they want, without so much as a court order, even when you don't owe the tax.

I am broke. I have no job. I have no insurance policies. I have no car. Yet, I have not asked for welfare or public assistance. At one time, I had a very successful business in trash management, but the Government has stripped me of everything; and everything they did was based on naive assumptions. Nothing they did had any basis in fact whatsoever. Since August 3, 1982, we have never felt so humiliated and so totally stripped of all of our faith that we have always had in our system of Government.

But we have done nothing wrong and nothing illegal. We are victims of an IRS mentality that believes all taxpayers are criminals and should be punished.

After years in this nightmare, we have lost many of our acquaintances, family, and friends. Everyone assumed that the IRS must have had some basis for what they did. They refuse to believe that our great country, with its Constitutional protections of the Bill of Rights, could have allowed some Government agents to go berserk. After all, they say, those kinds of things only happen in Communist countries.

But I have also learned that not only can the IRS make you a victim, but lawyers can also. Shirley and I have incurred over $75,000 in legal and accounting fees to fight the IRS. Shirley is a totally innocent bystander in this mess and had to pay over $30,000 in legal fees to redress her wrong. As taxpayers, the system is stacked against us.

We have to contend with overzealous IRS agents who try to make us pay more than we should and lawyers and accountants who play along with the game to try to get their higher fees.

I come before you today to ask for your help, not only for me but for all other Americans. I used to pray at night that this would happen to every American because only then would the system change. We in this country are getting away from our great documents, the Constitution and the Bill of Rights. We need protection from Government agents like Boandl and Jessup who think they have the power to destroy peoples' lives without cause or justification.

We also need your help to protect our constitutional rights. The courts are not sympathetic to taxpayers. Shirley sued Agent Boandl and Officer Jessup for violating her constitutional rights. In the U.S. District Court, she won because the court ruled the IRS had violated the Fourth and Fifth Amendments to the Constitu-

tion. The court granted her compensatory damages but no punitive damages.

In the Third Circuit Court of Appeals, Shirley lost through some strange and twisted reasoning. The IRS argued that her constitutional rights were not violated just because Agent Boandl and Officer Jessup violated the IRS Manual.

The IRS argued that the IRS Manual establishes an internal operating procedure but not a constitutional due process standard. The court agreed with this argument because Shirley had failed to show any detrimental reliance on the requirement that the IRS Regional Counsel approve the filing of notices of lien and levy. I don't know how she was supposed to rely on this requirement when she was an innocent victim in this whole affair. There was nothing she could have done ahead of time to rely on this.

She never even knew about the IRS liens and levies until her checks started bouncing. But what is even more bizarre, the court recognized that jeopardy assessments preclude the possibility of reliance. To top it off, the court ruled that the IRS had not violated her Fourth Amendment rights against the warrantless seizures for the simple reason that such actions violated no privacy interest. The court totally ignored the fact that Shirley did not owe any taxes.

I come before you today and ask you why? Why did this happen to me? Why did this happen to Shirley? How could our Government have let this happen? Where are the controls of IRS and its agents? Don't we at least deserve the same rights as common criminals? Aren't we entitled to a due process?

Doesn't the Constitution guarantee me protection from unreasonable searches and seizures?

For five years, I have been shackled and in an invisible prison. I don't drink. I don't smoke, or take drugs. But for five years, I have been in a depressive drunkenness.

Every moment of my life has been totally consumed with this. Because of this, I am left with nothing; but Agent Boandl got a promotion and a raise for what he did to me.

I ask you: Is this the way we want our country run? Shouldn't overzealous Government agents be held responsible for their actions? Shouldn't there be an easier way to stop these people than having to bankrupt yourself through legal fees? Shouldn't the Government be requested to repair the damage and make me and Shirley whole again?

Mr. Chairman, thank you for giving me this opportunity to tell you how the IRS can destroy a law-abiding taxpayer's life. I sincerely hope you are successful in enacting a Taxpayers' Bill of Rights to protect our taxpayers from experiencing a similar nightmare. Thank you.

Senator PRYOR. Mr. Treadway, we have decided this morning that we will allow each witness to make his statement; and then, if

we may be permitted and if you would so consent, then we would ask questions of the witnesses after the three have completed their testimony.

Let me just make a comment. Your coming here today in public with what you have been through in the past five or six years in my opinion deserves a chapter in Profiles in Courage. We thank you, and all American citizens should be in your debt.

Mr. TREADWAY. Thank you.

[The prepared written statement of Mr. Treadway follows:]

Thomas L. Treadway
P.O. Box 196
Pipersville, PA 18947

Mr. Chairman:

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the "apparent dissipation" of my assets while I was being audited. On the same day he filed a tax lien against me and another one against Shirley. Revenue Officer Jessup's history sheets - which we obtained under the Freedom of Information Act - stated that he was proceeding without the approval of IRS legal counsel because he feared the government would lose revenues.

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and a good faith belief that their actions were fully in accordance with the law and regulations."

As a result of the seizure of Shirley's life savings:

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The Court agreed with this argument because Shirley had "failed to show any detrimental reliance on the requirement that IRS Regional Counsel approve the filing of notices of lien and levy." I don't know

how she was supposed to rely on this requirement when she was an innocent victim in this whole affair. There was nothing she could have done ahead of time to rely on this. She never even knew about the IRS liens and levies until her checks started bouncing. But what is even more bizarre, the court recognized that "jeopardy assessments ... preclude the possibility of reliance." To top it off, the Court ruled that the IRS had not violated her 4th Amendment rights against warrantless seizures for the "simple reason that such actions violated no privacy interest." The court totally ignored the fact that Shirley did not owe any taxes.

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Mr. Chairman, thank you for giving me this opportunity to tell

you how the IRS can destroy a law abiding taxpayer's life. I sincerely hope you are successful in enacting a taxpayer's bill of rights to protect other taxpayers from experiencing a similar nightmare.

m:35

Senator PRYOR. Ms. Mittleman, we look forward to your statement. This is Elaine Mittleman, attorney at law in Falls Church, Virginia.

Let me just state to our colleagues that Section III of the Taxpayers' Bill of Rights includes a section to establish an inspector general created by statute, not by administrative decree, responsible to the Congress.

Basically, the statement of Ms. Mittleman this morning will relate to this need and to some other matters that she would like to tell this committee about at this time.

We are very honored that you would be here this morning, Ms. Mittleman.

STATEMENT OF ELAINE J. MITTLEMAN, ESQUIRE, FORMER TREASURY EMPLOYEE, FALLS CHURCH, VA

Ms. MITTLEMAN. Thank you, Senator Pryor. I am glad you clarified that because what I am speaking about is not related to the IRS; it is related to the Treasury overall.

I was a Treasury employee and I went to the Inspector General in that capacity. I am going to paraphrase some of my statement, so if it doesn't look like I am reading off the page, you will understand why.

I am an attorney and a sole practitioner, and I am pleased to testify today on my experience with the Inspector General. I think it can best be compared to the "Little Shop of Horrors." I agree with Mr. Treadway in that in my situation as well as his consisted of guilty until proven innocent, complete and utter lack of due process.

When I worked at the Treasury, my first job out of law school—this was in 1980—I became very concerned with some of the things that I saw in my particular capacity. There were some legal issues that I felt were not being complied with, and I made those points with my boss as best I could

And the situation deteriorated, deteriorated, and deteriorated; and I finally was told by an attorney in private practice that, well, you should go to the Inspector General because that is what the Inspector General was created to do. At that point, I had been threatened with termination.

I won't go into the details, but it become a very big problem of communication, to put it mildly. When I went to the Inspector General, he said to me: Well, this is a personnel matter; go over to the Office of Special Counsel. We deal with waste, fraud, and abuse.

I said: Oh, no, no, no. This is not a personnel matter; this is waste, fraud, and abuse definitely. And as an aside, I did go over to the Office of Special Counsel, as well, which is another story; and I think Senator Pryor has been involved in that as well.

So, I went to the Inspector General and provided them with handwritten notes as to my concerns under the law that I was worried about. That is basically the last time I saw the Inspector General, and that is when my troubles really started. I did end up getting fired about six weeks after that time; and after I was fired, I received a copy of the Inspector General report.

Portions of it were blacked out; I will show you. This is just a part of the Inspector General report. It turns out they investigated me instead of what I asked them to investigate. This is basically a personnel document as to what a bad person I am.

Then, they told me I was not allowed to correct, amend, or supplement this record whatsoever because it was an investigatory document for law enforcement purposes; and it remains as you see it to this day. I am in the process right now of trying to pursue litigation to rectify that situation.

I am representing myself, and the outcome of that litigation can only be guessed at this time. It is by no means a certainty that I will get the remedy that I need.

The Inspector General report itself was the collection of interviews of different people including the secretaries, security guards, etcetera. It had actually nothing to do with the law that I was complaining about. It had to do, like I said, with me. Some of the interviews directly conflicted with some of the interviews. There was no attempt to explain which interview made more sense.

There were no findings of facts, recommendations, or conclusions like a GAO report would have. It was just a compendium of interviews, with the blacked-out part in it.

I repeat that I had no comment. I was not allowed to say this is not true; this didn't happen; that did happen--nothing.

Senator PRYOR. You had no hearing. Is that correct?

Ms. MITTLEMAN. I had nothing. They just sent it to me in the mail. I mean, it took me weeks to even read it. You know, it was a loser.

As another aside, if they had come up with something so terrible, why didn't they report it to somebody? In other words, the only purpose of this document is to malign me.

In other words, there was no remedy for the Inspector General. They didn't say that this was something you would really be able to look into. It just sits on a shelf to be used as a weapon against me. That is its only purpose.

When I went to the IG, I literally created a monster. In other words, this report would not exist if I hadn't gone to the IG. No one else went there. I am the one who went there, and it ended up being what I call a sword used against me but it is shielded from my inputting into it; I am stopped from doing anything about it.

Like I said, it is like the "Little Shop of Horrors" because it has followed me around. It was sent over to the Federal Reserve. It was sent over to the GAO. Office of Special Counsel relied upon it. It was basically paraphrased in a newspaper article. While the Treasury spokesman was saying he couldn't talk about the Inspector General report because of the Privacy Act, but he said it wasn't flattering to me. I think those clearly are violations of the Privacy Act.

Then, several years later, I was selected for a Schedule C position with the Department of Commerce, and I thought I could finally get this behind me and I will have a nice, clean record over at the Department of Commerce. But it turned out I had to get a full-field investigation because of international trade, and I had to get a security clearance.

So, the OPM investigator said to me: Well, we have this Inspector General report, and so you have to sign a release under the Privacy Act because we have to have this thing. And I said, well, okay; but I said this thing is really a rag; and whoever reads it, I said, I would like to be able to explain to them the background in which this thing was created.

So, he said to me, oh, no problem, you know; that is our system. And whenever we make our determination—this is OPM I am talking about now—that you will have the hearing and you can explain what is going on and so forth. Anyway, I never got any hearing on that either. So, then I ended up with an OPM document which was sort of an elaboration on the Inspector General report. It has even more blacked-out stuff in it, and this is also part of my litigation.

This is Protected Source A and Protected Source B.

Senator PRYOR. You have no idea what was blacked out in that report?

Ms. MITTLEMAN. A sentence here says:

> Source does have some question concerning subject's honesty. Subject—that is me—did not seem to be an emotionally stable person. Subject was prone to emotional outbursts and overreactions.

But I can tell you I think that I know who these people are now because two of the attorneys that I worked with are now in New York at Treasury. I wrote them letters, and they are not returning my phone calls. So, I have a feeling that these are Protected Sources A and B, but what I can do about it, I don't know, because that is another problem with another law.

Anyway, as to the merits of what I got from the Inspector General in terms of an auditing/accounting type thing, the General Accounting Office subsequently did do what I would not call an investigation, but they did a review at a Congressman's request. And basically, it concurred with what I have been saying. So, in other words, basically what I complained about was a policy matter, and I recognized that at the time; but the policy matter transformed itself into legal requirements—mere technicalities, if you will.

So, that is what I was concerned about, and I believe that my case had merit; but the Inspector General just went into that basically.

Senator PRYOR. Do you feel like you have basically been sort of blacklisted now as a Federal employee?

Ms. MITTLEMAN. Kneecapped? Yes. This is on my record for 15 years, and the stuff that is blacked out is actually worse because it says things like my boss received Secret Service protection from me, which is completely fallacious because the Secret Service provides protection—and I looked up the law yesterday—for the President, his wife, Presidential candidates, et cetera. And you know, as a GS-13, I don't believe that the Secret Service would be protecting people from me.

Senator PRYOR. Have you ever tried to take someone's life before? Do you have a history of this? (Laughter)

Ms. MITTLEMAN. Oh, no.

Senator PRYOR. Do you have any reason to be dangerous?

Ms. MITTLEMAN. I have a sharp tongue but, obviously, no, I don't. I am not dangerous. He also said that I had leaked a transcript of a

Treasury meeting to the New York Times. Only direct intervention by the Secretary of the Treasury kept it from being printed; and that was also completely untrue, and I have letters from several officials, including a New York Times official and former Secretary Miller saying no, that is not true.

But I was never confronted with any of this stuff either.

All right. I think what happened was, when I went to the Inspector General, you know at that time my boss told me that I had caused him a great deal of personal embarrassment by going to the Inspector General. And this was at the time that he was accusing me of stealing documents and things; and it was like: Well, if you think you are embarrassed, what about me? So, I said to him, that I thought given the circumstances, it was the only choice that I had because there was no other avenue I could pursue.

I had gone through the channels at Treasury; no one was listening to me. So, I believe that the Inspector General, in creating this document, it has followed me around; it has mushroomed; and it will continue to follow me around. I cannot correct or amend it because it is an investigatory document, but it is being used as a personnel document against me. In other words, if I try to get another Government job, I will have to sign another release under the Privacy Act; and they will read it again and it will go on.

Then, I subsequently found out that this Inspector General has absolutely no accountability. He does not have to report to Congress. And I realized then that they full well, if that was their bent, could write a report knowing that it could be completely untrue and no one would ever know the difference.

They could use it simply as a weapon against me, which is what they have done. And they would never have to be accountable to explain this, Senator Pryor, to anyone: Why does this page say this when that page says that? They don't have to do that.

Frankly, I am an attorney, and I am pursuing this litigation on my own. Like I said, I don't know what the result will be, but at least I can go to the law library and look up the cases. But other people are maybe not so lucky because they are not able to read the cases, understand the law, and this could happen to them as well. They could go to the Inspector General, thinking that this was going to be some protection for them, and they are going to have the same kind of blacked-out stuff that I have had.

So, I recommend obviously that you have a statutory IG. Furthermore, also under the Civil Service Reform Act, as I am sure you are aware, the agencies interpreting the—of these jobs as contributing to the agency or something—in other words, there has been no recognition that the individual should be protected.

In other words, the individuals have not been protected; and the judges have relied upon the fact that Congress has not explicity said: We want to protect the individuals. They say under Bushvey-Lucas, there was a Civil Service, and that should be adequate remedy.

So, I urge you if you so think that the individuals need protecting, that you make that as explicit as you can possibly make it so that lawyers and judges don't get mired in what was the Congressional intent. As you know, that is what they are stuck with. And I think the Inspector General must be accountable. In other words, if

they are going to be making reports—even though they are not strictly personnel documents—individuals are the people they are talking about in those reports—and there must be something in your bill to make sure that individuals have some accountability and have some due process. And if the Inspector General says something that is absolutely untrue, then the individual can do something about it. And I will be very happy to answer questions.

Senator PRYOR. Thank you very much. We really appreciate your testimony today. I have been—and I know others have been—for years very involved and very interested in the "Whistleblower Act" and people who see problems in Government. Yours may have been a clear whistleblower case. I know the case you are talking about. I think it was the Chrysler matter.

Ms. MITTLEMAN. Yes.

Senator PRYOR. On some reports that you did not feel were coming in; but whether they were coming in or not coming in, it looks like you were investigated rather than the people you were trying to find out some facts from.

Ms. MITTLEMAN. I did get investigated. Definitely.

Senator PRYOR. We appreciate your being here this morning. We will have questions momentarily.

Ms. MITTLEMAN. If I could say one more thing? When I went to the Office of Special Counsel, Senator Pryor, I wrote you a letter subsequently on that matter as well. So, you have been involved in the whole case.

Senator PRYOR. Thank you. Our next witness on this panel is Mr. Joseph Smith from Las Vegas, Nevada. And you were with the Internal Revenue Service for——

Mr. SMITH. Eighteen and a half years.

Senator PRYOR. Eighteen and a half years. I have read your statement. I am intrigued by some of the things that you have to report, and we look forward to your statement. Mr. Smith? Excuse me, Senator Reid?

Senator REID. Mr. Chairman, I would just like to make a comment that I really appreciate Mr. Smith's coming at his own expense to the hearing. This is the tax season and he is a tax accountant. He is taking time away right in the middle of the tax season. When I introduced this bill, Mr. Smith indicated that there was some merit to it. He has been most helpful, and I can now tell him in a public setting—as I should have done privately—how much I appreciate his time and efforts in this matter and especially coming at this time of the year. We possibly could have scheduled the hearing at a more appropriate time for you, but we are indebted to you.

Mr. SMITH. I just want to say something, Senator Reid, I appreciate the opportunity to make my comment, but the reason why I am here in the middle of filing season and giving up five days, so to speak, of productivity is because I consider this bill to be extremely important; and I consider it to be the right kind of a bill to represent taxpayers' rights and to ensure more equitable and fair administration of the tax laws. And that is why I am here. And I would like to read my statement at this time, Mr. Chairman.

Senator PRYOR. Certainly. Please proceed.

[The prepared written statement of Ms. Mittleman follows:]

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STATEMENT OF ELAINE MITTLEMAN

ROLE OF TREASURY INSPECTOR GENERAL
IN INVESTIGATING COMPLAINTS ABOUT
THE CHRYSLER LOAN GUARANTEE PROGRAM

April 10, 1987

I am Elaine Mittleman, an attorney, and I am very pleased to have the opportunity to speak today. I worked at the U.S. Treasury on the Chrysler Loan Guarantee program from May 1980 until January 1981, when I was fired. Our job at the Treasury was to monitor Chrysler's compliance with the Chrysler Loan Guarantee Act and the loan agreements. Shortly after I began working at the Treasury, I became concerned that the Loan Guarantee was a political deal and that strict monitoring would be performed only as long as it was relatively painless. In the second half of 1980, Chrysler's financial situation was precarious. One of my jobs was to insure that Chrysler was submitting the required documents. Because of its financial situation, it was simply not able to do so. A particularly troublesome document was the monthly Performance Certificate, in which Lee Iacocca and other corporate officers were to certify that Chrysler was in compliance with the operating plan (the five-year forecast and key to the monitoring). I expressed

my concerns about the monitoring in a variety of ways with Treasury officials. In early December 1980, I was told I would have four more weeks of pay in return for giving up my key to the office and not taking any Chrysler documents home with me. There had been an attempt to label me a security risk, someone who was looking for cover-up documents. When I received this "offer," I considered it virtually a bribe to stay away from the proceedings involving Chrysler's third request for funds. (For a summary, see newspaper clippings, attached herein as Exhibits A-C.) I was absolutely dumbfounded and did not know what to do. An attorney with whom I had worked while a law clerk suggested I go to the Inspector General. I did not really know what it was, but he told me that my concerns presented exactly the situation for which the I.G. had been created.

I met with the I.G. on Friday, December 12, 1980, and again on Monday, December 15, 1980. Over that week-end, I prepared handwritten notes, at the request of the I.G., summarizing the situation. I never again met with the I.G. I was fired about six weeks later, and subsequently obtained a copy of the I.G. report through the Freedom of Information Act and the Privacy Act. Before I was fired, my boss told me I had caused him a "great deal of personal embarrassment by going to the I.G." I told him that, given the circumstances, I thought it was the right thing to do. He said, "I don't believe you."

The I.G. investigated me, rather than Chrysler. I was so shocked when I saw the report that I could scarcely read it. It made accusations that I had been in the assistant secretary's office, looking for documents. The I.G. report is defaming and inadequate in a number of ways. It does not investigate the charges I made, and served no auditing function whatever. It contains no findings of fact, but is merely a compendium of interviews - many of them about my actions. Further, I was told I could not correct or amend the report because it contains "investigatory material" and "investigatory records." I received a sanitized version of the I.G. report (see, for example, the interview with Roger Altman, the assistant secretary, attached herein as Exhibit D), and a subsequent copy I received has even more parts deleted. Thus, I have never been given the opportunity to correct, clarify or even give my side of the story on these accusations. I have not even seen the entire I.G. report, because of the blacked-out parts. I am presently pursuing litigation in this matter, but, because of the complexities of the law, I am not assured of success.

I subsequently discovered that the Treasury I.G. is not a statutory I.G., and does not have to report to Congress. Therefore, I say that it was used as a sword against me, rather than a shield to protect me. I literally created a monster that has followed me around.

How damaging has the I.G. report been to me? The damage cannot be overstated. When the article on my termination appeared in The New York Times, copies of the I.G. report were sent to the Federal Reserve and the General Accounting Office. (This would appear to be a violation of the Privacy Act.) A Treasury spokesman told a Detroit Free Press reporter that he could not release the I.G. report, because of the Privacy Act, but he stated that it contained "personal stuff" about me "that is not flattering." Thus, he was protected by the Privacy Act from discussing any substantive investigative results (if there had been any!), but he could paraphrase that the report did not flatter me. This, again, would seem a clear violation of the Privacy Act. On the same day that I went to the Inspector General, I went to the Office of the Special Counsel of the Merit Systems Protection Board. The Office of the Special Counsel and Mr. Sugiyama, Associate General Counsel at OSC, relied upon the I.G. report, particularly as verification for my "lack of judgement and lack of rationality" (see excerpt of OPM report prepared in 1983, attached herein as Exhibit E). Going to the Inspector General did not even qualify me as a whistleblower, according to Mr. Sugiyama, even though that would seem to be a clear whistleblowing activity under the Civil Service Reform Act. Finally, in 1982-1983, I was being considered for a Schedule C position at the Department of Commerce for which I needed

a security clearance. I thought getting this position would alleviate the damage done to my reputation from the Treasury experience. During the course of the OPM full-field investigation, the investigator told me I had to sign a release for the I.G. report. I told him that I would, but that I would like to explain the report to whoever read it. The investigator said, "Oh, sure, that's our policy. Before anything is done on this, you will get a hearing." I never did get that hearing. When I saw the OPM report, I was shocked again. It is filled with lies and misstatements. But what has happened is that the I.G. report followed me over to Commerce and has now a life of its own.

As to the merits of what I took to the I.G., was there something there? The answer can only be yes. Many of the reporting requirements had to be waived. Officials argued that telephone contacts with Chrysler were maintained. While that is true, monitoring and creating a paper trail cannot be accomplished verbally. One of my concerns was that, some years later, at a congressional hearing, I would be asked, "Where is the report on X?" I did not want to answer, "Oh, my boss said it wasn't important." For one thing, he was not an attorney and I was, and I believed I had ethical requirements to uphold the law. I thought that we, as individuals, did not have authority to waive requirements. No question that many requirements were "mere technicalities," but that is the nature

of a loan document. I used to say that - if all the requirements were written down by Congress and the lawyers in order that a loan guarantee be punitive (rather than attractive), but those requirements were really just for show - then the job of enforcing and monitoring should be given to chimpanzees who did not have to worry about ethics.

The GAO subsequently did an inquiry into the reporting by Chrysler. The I.G. could have done this, as well, but, instead, it investigated my behavior. The GAO review was somewhat hindered by the fact that the Comptroller General of the GAO was a voting member of the Chrysler Loan Guarantee Board, and he could not really audit himself. See letter from Milton J. Socolar to Rep. Henry S. Reuss, dated March 17, 1981, attached herein as Exhibit F. The final GAO letter, attached herein as Exhibit G, discussed the waivers of reports and the omission of a December 1980 performance certificate. It should be noted that another concern was the failure of Touche Ross & Co., Chrysler's auditors, to be able to express an opinion about Chrysler's 1980 financial statements. See Accountants' Report, dated February 27, 1981, attached herein as Exhibit H. Touche Ross' report was not unexpected, given the financial situation and restructuring of Chrysler. Rendering this opinion basically relieved Touche Ross of any responsibility if Chrysler went bankrupt. See letter of Professor Yuji Ijiri, dated February

26, 1987, attached herein as Exhibit I. It would seem that the I.G. could have performed an especially vital auditing role in that situation, since both GAO and the outside auditor, Touche Ross, were quite limited in the control and overview they could exercise. Nevertheless, the I.G. failed utterly to investigate the monitoring of Chrysler and, instead, shot the messenger.

What do I recommend? First, that the Treasury I.G. be statutory and held accountable for the reports it creates. It must do an actual auditing, with findings of fact, conclusions and recommendations. Second, those who go to the I.G. must be protected. There is a similar problem with the Merit Systems Protection Board. The personnel in these organizations behave as though their objective is to the greater good of all, which translates into hurting the individual. While I acknowledge that the I.G. should not represent the individual bringing a charge, I strongly urge that Congress add enough language to insure that there is Congressional intent that the individual not be harmed. Finally, Congress must be especially forceful in its efforts to equip the I.G. with proper tools to be effective. Note the comment (letter attached herein as Exhibit J) of Milton Friedman that "there can seldom if ever be real protection for whistle blowers given the self-interest of the persons on whom the whistle is blown." Only Congress can provide that protection.

Chrysler's Notes, Due Tomorrow, May Exceed 15%

Underwriter's Trial Balloon Finds Big Investor Interest In $400 Million of Debt

By Edward T. Pound
Staff Reporter of The Wall Street Journal

NEW YORK — Chrysler Corp.'s long awaited $400 million offering of U.S. government backed notes may carry a yield of more than 15%.

The 10-year issue, tentatively scheduled for sale tomorrow, is to be priced tonight. And underwriters yesterday were busy trying to gauge investors' appetite for the troubled auto maker's securities at various price levels.

Sources said that Salomon Brothers, the lead underwriter, first tested the market yesterday by tentatively pricing its share the issue to yield some 2½ percentage points above the comparable return on 10-year Treasury securities. That would have put the Chrysler yield at more than 15½%.

That trial balloon brought in a flood of investor interest. "They got indications of interest for almost $1 billion of the notes," said a source. As a result, Salomon Brothers later in the day pared the proposed spread over Treasury securities to two points for a yield of about 15¼%, sources reported.

"Almost all of the prospective buyers just hung in there," according to one bond salesman, who added that "this deal is going to be a most at any yield above 15%."

Officials of Salomon Brothers refused to comment on its trial pricing or tentative investor response. And specialists noted the pricing ideas could change considerably before the issue is offered for sale.

Whatever the case, the yield almost certainly will be steeply above those offered on Chrysler's previous two government guaranteed offerings. The first one, a $400 million issue, was sold last June at a yield of 10.20%. At the time, that was about ¾ point above the return on 10-year Treasury securities.

A second offering, of $300 million of notes, reached the market last July at a return of 11.47%, or about one point above the yield on similar government securities.

The actual price on the latest issue would have to get the nod from the Chrysler loan guarantee board in Washington. The board originally set a ceiling limiting the interest rate on the issue to 1½ points above the current average yield on outstanding Treasury securities of similar maturity.

But specialists said the board easily could change the provision were it deemed appropriate. It couldn't be determined how the board reacted to Salomon Brothers' pric

Chrysler to Get Additional U.S. Support Though It Hasn't Fully Met Prior Terms

2/26/81

By Andy Pasztor
Staff Reporter of The Wall Street Journal

WASHINGTON — Federal officials are prepared to grant Chrysler Corp. the $500 million in additional loan guarantees it wants, even though the auto maker hasn't complied with parts of its earlier financing agreements with Washington.

In its determination to prevent a Chrysler bankruptcy, the government has retroactively waived about a dozen specific administrative and financial requirements of the company's bailout plan, according to federal documents and a confidential report issued last month by the Treasury Department inspector general.

Meanwhile, Chrysler said it cleared the final major hurdle in its effort to secure the use of the added $400 million in federal rescue funds when the last of its 100 lenders yesterday signed a revised debt agreement.

The administrative and financial requirements the government waived include minor procedural matters that needed to be cleared up before the additional loan guarantees could be issued. But the documents show that some other waivers were required because Chrysler didn't keep the government properly informed about the full effect of the company's slumping sales and deteriorating financial condition in the past few months. Moreover, Chrysler couldn't provide the government with crucial assurances from outside advisers about the company's viability, the feasibility of its strategic plans or its long-term prospects for recovery, the documents show.

Federal officials say that, finally, they advised the company to seek some of the waivers. And they say the company's revised operating plans, recent cost-cutting moves and additional concessions from lenders, employes and other groups now enable Chrysler's advisers to submit those necessary assurances.

Chrysler Comments

A Chrysler spokesman agreed that the company hasn't met all the reporting requirements in the agreements, but he denied that prevented the loan board from receiving adequate information to do its job properly. In fact, the auto maker said, it "submitted considerably more details than they could ever use."

Some of the government documents, however, indicate that the lack of reliable, timely information about the company's status hampered the government's ability to track its fortunes in the past few months and made it difficult for the board to fulfill all its responsibilities to protect the Treasury's huge investment.

The government must have such information, the documents say, if it is to monitor adequately the financial position of the company and determine its eligibility for federal help. In this case, however, the staff of the Chrysler Loan Guarantee Board, which oversees the company's operations, concluded that Chrysler's failure to fully live up to its reporting requirements should be overlooked because it doesn't "affect the performance of the board's current functions."

Among other things, the loan board has approved:

– Waivers of Chrysler's requirement to file quarterly, monthly and yearly financial statements extending back to last June, with the condition that the company must comply strictly with this requirement in the future.

– Waivers of detailed explanations by the company or its advisers about why its earlier operating plans and loss projections went off track and what alternative plans it was considering at the time to cut costs and boost sales.

– Waivers of the government's bar against Chrysler's incurring additional debt by postponing payments to suppliers. "Because of the need for prompt action to conserve its cash," the documents indicate, the company acted on its own without obtaining necessary loan board approval.

– An increase to $550 million from $500 million in the maximum loss the auto maker may suffer this year without defaulting on its federal loan guarantees.

One of the main reasons for Chrysler's problems, according to the documents, was the "rapid deterioration in the automobile market in the fourth quarter" and the company's inability to revise its estimates and plans fast enough to keep up with those changes. As a result, the government concedes it didn't receive what it considered to be reliable updated estimates of the extent of Chrysler's anticipated fourth quarter loss until sometime last month.

Without the waivers, several of Chrysler's violations could constitute a default of the $500 million in federal loan guarantees previously approved by the government.

Several of the board's staff members late last year called many of the reporting and procedural problems to the attention of senior Treasury Department officials in the Carter administration. But it isn't clear what steps, if any, have been taken to make sure they won't be repeated.

"Technical Violations"

According to the inspector general's report, Michael Driggs, the head of the loan board's staff, last December acknowledged that Chrysler was "somewhat deficient" in submitting required information to the government, which constituted a "technical violation" of the company's federal loan agreements. But at the time, Mr. Driggs argued that this didn't have any "real impact" because the company was "operating in an environment that changed from day to day" and, therefore, couldn't be expected to supply timely reports.

Several board staffers told the inspector general about the same time that portions of the original agreement to guarantee Chrysler's loans were too restrictive and needed to be amended or waived. They also indicated that changes were under way to make

Exhibit A

Heller & Company New York [illegible] Miami [illegible] offices in Philadelphia, Syracuse, Birmingham, Charlotte and [illegible]

10-K's
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A second offering of $400 million of notes reached the market last July at a return of 11.4%, or about one point above the yield on similar government securities.

The actual price on the latest issue would have to get the nod from the Chrysler loan guarantee board in Washington. The board originally set a ceiling limiting the interest rate on the issue to 1½ points above the current average yield on outstanding Treasury securities of similar maturity.

But specialists said the board easily could change the provision were it deemed [illegible]. It couldn't be determined [illegible] the board [illegible] Salomon Brothers [illegible] yesterday.

Treasury security prices, which move inversely to yields, [illegible] widely yesterday. The Treasury's 13% notes due 1986, for instance, were quoted late yesterday after [illegible] at 98 10/32, where the yield was about 13.[illegible]%.

But a disclosure by the White House that the Reagan administration underestimated by several billion dollars federal spending in the fiscal year beginning Oct. 1 sent prices tumbling. By early evening the 13% notes were quoted at 97¾, where the yield was up to 13.4[illegible]%.

For Chrysler, the rate swings could be significant. Each ¼ point in the rate of the new issue translates into $2 million annual interest charges, or $20 million over the life of the securities.

Some sources said the underwriters tentatively plan to place a 15% stated rate on the latest Chrysler issue and offer the securities to the public at a price below face value. That would result in an effective yield of more than 15% for the investor because the securities would be redeemed at face value at maturity.

THE WALL STREET JOURNAL (USPS [illegible]) [illegible] Columbia Pike, Silver Spring, Md. [illegible]

Published daily except Saturdays, Sundays and general legal holidays. Second class postage paid at New York, N.Y. [illegible]

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Several board staffer... general about the sam... the original agreement... ler's loans were too r... to be amended or wai... cated that changes were... sure Chrysler submitted... tion so the board could... auto maker's activities.

The internal Treas... doesn't criticize any of... ficials or the company, a... any recommendations.

The federal loan boa... meet early tomorrow m... Chrysler's request for the... ditional loan guarantees.

'Open' Primaries Are Dealt Setback By Supreme Court

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The Supreme Court sounded what may be the death knell for "open" presidential primaries in which voters aren't required to declare party affiliation.

The high court ruled six to three that the Democratic Party had a right to refuse to seat Wisconsin's delegates at the national convention in New York last summer because the delegates weren't chosen in accordance with party rules. The delegates were seated because party officials wanted to avoid a fight at the convention while the case was pending before the Supreme Court.

Party rules require that delegates be chosen in a process that includes only voters who have declared themselves to be Democrats. The Wisconsin law allows Republicans and independents to cross over and vote in the Democratic primary and binds delegates to the results of the primary.

States like Wisconsin and Montana, which has a similar law, can still hold open primaries, but they will have to find another method to select convention delegates. The primary simply would be a popularity contest.

The opinion by Justice Potter Stewart said national political parties have a First Amendment right of association that gives them broad leeway in setting party rules. Justice Lewis Powell dissented, joined by Justices Harry Blackmun and William Rehnquist.

Democratic National Chairman John White, who is scheduled to vacate that post ...

Insider Actions

By KENNETH B. NOBLE

Within the past month, a flurry of stock trading scandals has tested the detective skills of a little-publicized team of analysts at the New York Stock Exchange.

On Feb. 3, a former investment banker at Morgan Stanley & Company and three others, were accused of

3/4/81

Wyman, for violating insider trading rules. And last week the financier Edward M. Gilbert was convicted of 34 counts of stock manipulation.

The detective work in each case originated in a small, noisy room several stories above the trading floor of the New York Stock Exchange. There, amid the staccato clatter of printing machines that record stock trades, a team of 11 analysts and investigators, armed with computers, follows each transaction made in a trading session.

Officials at the New York Stock Exchange are decidedly optimistic about

other market observers, while applauding the stock exchange's security efforts, are not so enthusiastic about its ability to protect against well-executed stock manipulation or insider trading schemes.

"If a person has inside information and tells a friend about it, and the friend tells another friend about it, and transactions are done through nominee accounts [in which the actual owners of the stock are not identified], detection becomes very hard, if not impossible," said Thomas A. Russo, a partner in the

Continued on Page D3

Treasury's Ousted Chrysler Critic

By ANN CRITTENDEN

It's not easy to be a whistle-blower, and becoming one usually happens in stages, for a series of different reasons. At least that is the way it happened to Elaine Joan Mittleman, a 32-year-old Washington lawyer.

Last month Miss Mittleman was dismissed from her job with the Treasury Department office that is charged with overseeing the Chrysler Corporation's compliance with the terms of its loan agreement, the largest public bailout for any private company in American history.

Miss Mittleman has decided to speak out because, she says, the auto maker failed to comply with the letter of the law authorizing the Government loan guarantees. The statute states that the company must fulfill certain reporting and financial requirements, presumably so that the Government will not throw good money after bad.

Miss Mittleman's superiors in the Treasury's Office of Chrysler Finance, she charges, seemed determined to overlook the company's allegedly repeated noncompliance with the terms of the aid agreement. A political decision had been made to prevent Chrysler from going bankrupt, she says, whether or not the company could assure the Government that the aid would guarantee its survival. The office constitutes the staff of the Chrysler Loan Guarantee Board.

'Hypocrisy' Alleged

"The whole thing is a charade," Miss Mittleman said in a long interview in Washington. "They should have just handed them the money and given up the hypocrisy that the board or a poor bunch of bureaucrats in the Government is monitoring the company's performance."

She added, "But if no one is monitoring them, how do we know when it is finally time to say no, no to a drain on resources like Britain has experienced with National Steel and British Leyland?"

The Treasury office responsible for the Chrysler affair is sometimes referred to as "The Big Lemon," because it has handled the affairs of all the financial losers that eventually sought Federal aid, such as Penn Central, the Lockheed Corporation and New York City.

Miss Mittleman's story is supported by a confidential report on her dismissal by the department's

Continued on Page D4

srael Is Focusing on the Sun

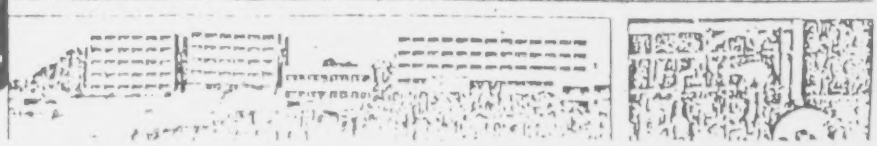

Exhibit B

Average Money Market	1,385.2	32	18.8	17.4	[illegible]
Lehman Brothers Cash Reserves Trust	161.9	38	18.7	18.7	[illegible]
Lexington Money Market	122.2	21	15.9	17.0	[illegible]
Liquid Capital Income	1,350.2	21	18.5	18.4	[illegible]

Source: Donoghue's Money Fund Report, Holliston, Mass. 01746

In Donoghue's Money Fund Report, a newsletter, by contrast, the rate on six-month savings certificates during the period was 13.81 percent.

Ousted Treasury Aide Critical of Chrysler

Continued From First Business Page

inspector general. In it, members of the Chrysler Loan Guarantee Board's staff acknowledge that the company did not comply with some of the financial and reporting requirements of the law for much of last year.

Nevertheless, last week the board approved another $68 million in loan guarantees for the company, which said it needed the money to avoid bankruptcy. Chrysler has now drawn down $1.2 billion of the $1.5 billion in guarantees authorized by Congress. The aid to Chrysler amounts to almost five times the support extended to the Lockheed Corporation a few years ago.

In the report, Miss Mottleman's superiors say that she was dismissed because she consistently involved herself in matters to which she was not assigned, had "personality problems" with other staff members, and tended to become "bogged down in insignificant details."

Roger C. Altman, who headed the Chrysler Loan Guarantee Board staff as Assistant Secretary for Domestic Finance until late last year, said in a telephone interview that Miss Mottleman was preoccupied with obtaining all of a multitude of reporting forms from the auto company, which he contended were often submitted "quite late." But, he insisted, other members of the board's staff had almost daily telephone contact with the company and "had the best information Chrysler had to give."

"I believe that we got from Chrysler virtually all of the truly important documents we had to get," said Mr. Altman, who has rejoined the investment banking firm of Lehman Brothers Kuhn Loeb.

Similarly, Michael A. Driggs, director of the Treasury's Office of Chrysler Finance, conceded in the report that he and Treasury officials, including former Secretary G. William Miller, knew that Chrysler was in "technical violation" of the law in failing to file all of the reports required. But he added that the requirements were too stringent in view of the fact that Chrysler's financial situation was changing almost daily.

Some Requirements Waived

Subsequently, according to the report, some of the reporting demands on Chrysler were waived. These included requirements that the company file the financial plans it failed to submit last year, and that Chrysler explain why its earlier operating plans were so inaccurate.

Without these waivers, Chrysler's violations could have constituted a default of the loan guarantees it had received by the end of last year.

Mr. Driggs, who is still at the Treasury, said this week that the board's staff was under orders not to discuss any matter concerning Chrysler because "it is such a controversial and highly visible issue."

Miss Mottleman, who was hired by the Treasury last May, some months after her graduation from the University of Michigan Law School, was assigned routine legal work. But she says she soon began to notice that the financial information Chrysler was submitting to the Government was either inaccurate or inadequate.

Miss Mottleman, who also holds an M.B.A. degree and who had worked as a financial analyst at the Ford Motor Company, concedes that she was "naive" in many ways. She also acknowledges that she was irked because she was never given meaningful assignments, although she was the only member of the small and youthful Treasury team who had had any experience in the auto industry. But those "intangibles and details" that began to interest her, she says, involved the heart of the Government's agreement to prop up the ailing company with public loan guarantees.

Record Loss in '80

She maintains that all of Chrysler's operating plans submitted to the Government last year, which invariably overstated the company's viability, still did not show sufficient earnings in 1981 to buff out the huge loss in 1980.

At that time the loss was estimated at a little more than $1 billion. It turned out to be $1.7 billion, the largest loss in American corporate history. The act providing for the loan guarantees specifies that Chrysler must show it can stand on its own by 1983.

After several months on the board staff, Miss Mottleman was given the task of insuring that all of Chrysler's reports were coming in on time. At first Chrysler officials were helpful, she says, even to the point of offering to find her a job if she were unhappy in government.

But by October, as she kept insisting that the company send in the delinquent financial documents, she says she was told by Fred Zuckerman, Chrysler's assistant controller, that he understood from Mr. Driggs that the reports were a "low priority item."

A Chrysler spokesman said of Miss Mottleman's charges: "The board knew everything we knew almost primarily who it was knew it."

She finally was able to persuade her office to send her to Detroit to obtain the legally required reports and made the trip in October. She obtained two certificates signed by Lee A. Iacocca, Chrysler's chief executive, stating that Chrysler was not in compliance with the latest operating plan approved by the board.

Nearly December Chrysler made its request for another $68 million in guarantees. When the loan guarantee board met to consider this request, Miss Mottleman attended the meeting, although she had not been invited. The same day, on Dec. 9, she was dismissed by Mr. Driggs. On Dec. 10 she was able to obtain from Mr. Altman a signed statement that she "has performed competently in a difficult and demanding situation."

On the following day, Mr. Altman's last day at the Treasury, she quotes him as telling her: "We did a competent job. I wouldn't say it was A or B plus, but it was competent."

On Monday Miss Mottleman starts a new consulting job, where she can use her expertise in the auto industry. "The bottom line on all this," she says, "is that there was no credibility or accountability in this whole thing."

Corporation

[illegible]

Israel Focuses on Solar Energy

Continued From First Business Page

the Lilon water [illegible]

Laboratory. Professor Brisland [illegible] [illegible] the high [illegible] [illegible] Colorado [illegible]

[illegible] have estimated that it may produce [illegible] at $3 cents a kilowatt-hour [illegible]

Exhibit C

...ed financial situation.

Though $300 million of the $1.5 billion in ...ederal loan guarantees for Chrysler autho...ized by Congress remains untapped, Chair...nan Lee A. Iacocca vowed earlier this week ...hat he would not ask for it.

ANOTHER CHRYSLER executive said it ...as a coincidence that its contemplated cash ...eserve will equal the amount of money ...vailable in Washington.

The executive also disputed a published ...eport that creation of a cash reserve was ...emanded by the U.S. Chrysler Loan Guaran...ee Board, the body that oversees the loan ...uarantee program.

CHRYSLER MAINTAINS that its recent wage freeze, debt reduction, plant closings and other actions have so drastically reduced its need for ongoing cash that there is now an opportunity to save some money.

"Before, we were selling assets to pay our bills," said Larsen. "Now our cash flow is good enough that we can sell assets to create a cash reserve."

He said no sales of important assets were planned. Instead, sales of excess tooling from closed plants, closed dealership properties and miscellaneous pieces of land, as well as savings from steadier production levels, should generate about $300 million, he said.

... than K mart.

"We are very heavily invested in stores in the soft part of the United States, mainly this area," said a K mart spokeswoman. "It's possible the K mart customer, in the early part of the month, was busy paying utility bills from January. After the snow melted and we got some sunshine, our (sales) improved."

THE THAW in the Frost Belt's weather brought out ... al program," Brennan said. "Consumers are responding to values." Many retailers have continued their Christmastime barrage of price-off sales and clearances into 1981.

Dayton Hudson's department store division, including Hudson's, showed a strong 10 percent gain from last February.

Hudson's increase, just under 10 percent, was "a pleasant suprise," said Vice-Chair... Inc. (Neiman-Marcus, Be...dorf Goodman), up 12.3 ...cent; Zayre Corp. of ...mingham, Mass. (T.J. Ma... Hit or Miss), up 15 perc... and Wal-Mart Stores Inc... Bentonville, Ark., up 33 ...cent.

Some companies, ... Federated, Zayre and ... Mart, had higher percen... gains in February than ... did in December, traditio... the busiest and best mont... retailers.

Axed loan aide says Chrysler broke rules

...y DONALD WOUTAT
...ree Press Automotive Writer

A fired staff member of the U.S. Chrysler ...oan Guarantee Board has created a brouha...a by alleging that Chrysler violated loan ...oard requirements while the board looked ...he other way.

The employe, former Detroiter Elaine ...an Mittleman, 32, says she persuaded the ...S. Treasury Department inspector general ...o investigate her claims that Chrysler repeat...dly failed to provide reports on its financial ...ondition, as required by the legislation au...horizing up to $1.5 billion in federal loan ...uarantees to save the troubled firm. And ...ittleman alleges that the loan board waived ...ome requirements because of a "political ...ecision" to help Chrysler.

The charges surfaced last week and were ...evived Friday in a story about Mittleman in ...he New York Times.

THE REPORTED VIOLATIONS, general...y acknowledged by Chrysler and the loan ...oard, seemed relatively minor. The inspec...or general's report quoted Michael Driggs, ...ead of the loan board staff, as saying the "technical violations" didn't have any "real impact" on the board's ability to monitor Chrysler's finances, according to a story last week in the Wall Street Journal.

(The legislation authorizing the loan guarantees to Chrysler mandates the board to ascertain that the firm is in good enough shape to survive after the guarantees run out. Chrysler has drawn $1.2 billion of the guarantees.)

But the inspector general's report was also laced with criticism of Mittleman, a University of Michigan law graduate and former Ford Motor Co. employe who was fired from her Treasury Department job Jan. 31.

THE EPISODE began last week, when the Journal reported the alleged technical violations in a story based on part of the inspector general's report. The next day, the Detroit News quoted a "Treasury Department insider" as charging that the board had "rubber-stamped" Chrysler's request for guarantees despite Chrysler's failure to provide adequate information.

The Free Press was told that Mittleman had been given the only copy of the confidential inspector general's report on which the Journal story was based. Mittleman herself said she had been "somewhat of a source" for the News story, though the News flatly denied it.

By week's end, Chrysler officials were fuming. They said they gave the loan board more information than it needed to monitor the company's financial condition.

THE EPISODE seemed to have sputtered out until Friday, when the Times ran a lengthy story that characterized Mittleman as a "whistleblower" who had exposed Chrysler's violations.

Mittleman told the Free Press she "instigated" the inspector-general's investigation in the first place "because I was concerned about what was going on."

Privately, Treasury Department officials say "unworkable" reporting requirements had been drawn up, and gave examples of the government demanding documents that didn't exist.

LOAN BOARD spokesman Robert Levine said while there were "some reporting requirements Chrysler did not meet," the board had "plenty of information to evaluate Chrysler's performance, as much as we r...ed."

Last week, when reporters asked to see the inspector general's report to ascertain whether Chrysler was indeed in serious violation of the requirements, Levine refused. He cited federal privacy laws and said there was "personal stuff in the report about (Mittleman) that is not flattering."

He declined to elaborate, saying the employe was fired for "unsatisfactory work."

But the Times said the report said Mittleman was fired because she had "personality problems" with other staffers and consistently became involved in matters she was not assigned to.

IN A FREE PRESS interview last week, Mittleman seemed ambivalent about her own allegations.

"Probably they're (Chrysler and the loan board) more right than I am," she said. "I don't question the people on the loan board for doing their best. The statement that they have more information from Chrysler than they need is probably a true statement. I just expected a much higher level of analysis than there was."

MEMORANDUM OF INTERVIEW

On December 18, 1980, Roger C. Altman, Assistant Secretary (Domestic Finance), Department of Treasury, was interviewed by Inspectors Robert P. Cahill and Raymond A. Firsching concerning allegations made by Elaine Mittleman to the effect that she was being terminated from her employment and that the Department of Treasury improperly handled the Chrysler Loan Guarantee matter. Mr. Altman stated substantially as follows:

On November 4, 1980, when he arrived at his office, he noted that the papers he had left on his desk when he left the previous evening had been disturbed. Sometime after this his secretary, Janice Krahulec, advised him about Lieutenant Anderson of the Treasury Security Force finding Elaine Mittleman in a disturbed state in the corridor outside of his office during the previous evening.

He queried Mittleman regarding her actions during the previous evening, and she said she had contacted a Chrysler official on the previous day concerning a report from Chrysler which she had not received and the official had been extremely rude to her. Mittleman said she had gone to his office to complain about the lack of cooperation and rudeness on the part of the Chrysler people. When she did not find him in his office she left; she encountered Lieutenant Anderson in the corridor, and at this time she was upset and was crying.

Mittleman told him that Anderson inquired as to what had happened. She told him she was trying to find him (Altman) and at the guard's suggestion she had tried to contact him through the Treasury telephone operator; when she was unsuccessful, she left the building.

[redacted]

[redacted] There had been several leaks to the press of information regarding Chrysler's financial and operational problems. Sometime ago Senator Blanchard of Michigan advised him that a reporter for the Detroit News had contacted him in an attempt to verify information received from a confidential source regarding Chrysler. The reporter refused to disclose his source, but stated that his source was a female working for the

Exhibit D

Office of Chrysler Finance who formerly had worked for the Ford Motor Company. [redacted]

He was also aware that Mittleman was unhappy with her work assignments in the Office of Chrysler Finance and that she failed to complete assigned tasks; instead, she pursued unimportant matters and adversely affected Treasury's relationship with Chrysler due to her insistence that Chrysler was not submitting certain reports required by the Agreement, and Mittleman claimed there was an attempt to hide the true financial situation of Chrysler. However, this was not true, because Treasury received sufficient information from Chrysler to understand its financial and operational situation upon which decisions could be and were made.

[redacted] he advised Driggs that Mittleman should be terminated effective January 2, 1980, and that she should be pulled out of the Chrysler matter and afforded time to look for another job. [redacted] accepts full responsibility for the decision to fire her.

He does not know how Driggs presented the matter to Mittleman but if there are technical flaws in what Driggs told Mittleman, he assumes the responsibility for them. He believes that Treasury has acted properly in its dealings with Chrysler and there is no validity at all to Mittleman's claim that the nonreceipt of certain Chrysler reports had a negative impact on the Treasury decision-making process. While certain parts of the Treasury/Chrysler Agreements may have been less than satisfactorily met, nevertheless this had no bearing on Treasury's assessments of Chrysler's situation.

With respect to Mittleman's assertion regarding the accounting firm of Ernst and Whinney, he felt she was way off base. They are a reputable firm and they have done an outstanding job for the Department.

Robert P. Cahill
Inspector

Subject	Case Number	Page	Investigation Dates	OPM Use
Mittleman	D1448	17		

Location of Personal Investigator | Locations of Record Sources

and Constitution Avenue, Northwest, Washington, D.C. (Telephone.)

Source was associated with Elaine Mittleman from approximately February, 1980 through May, 1980 when she resided in unit #302 at 6290 Edsall Road, Alexandria, Virginia. Subject's unit was located directly above the source's unit and they had casual contact as neighbors. They would see each other coming and going on nearly a daily basis and were friendly on a neighborly basis. Source notes that he attended one party in subject's unit. Although they would see each other coming and going on a frequent basis, source would only see the subject to talk to her about two or three times a month. Source does not know where subject was employed and is not sure whether or not she was employed anywhere. He has not had any contact with her since she moved out and does not know where she moved to. Source believes that subject had a female roommate for at least part of the time she was living there, but does not know the roommate nor exact dates.

Source described subject as a good neighbor who never caused any problems in the neighborhood. She appeared to be a pleasant and sociable person. Source never had any reason to complain about anything concerning subject.

Source believes subject to be an honest and trustworthy person. She always appeared to be emotionally stable and in good physical health. He never saw any evidence of involvement with law enforcement authorities nor did he have any reason to complain about noise or anything occurring whatsoever in that apartment. Source believes subject to be a person of good moral character and has no reason to question anything concerning her character, habits, or activities.

Subject is a loyal American citizen and is recommended for a sensitive position from the standpoint of the national interest.

Attempts to obtain additional coverage at this location were unsuccessful. Attempts to locate roommate were unsuccessful.

MISCELLANEOUS

UNITED STATES MERIT SYSTEMS PROTECTION BOARD, Office of the Special Counsel, 1120 Vermont Avenue, Northwest, Washington, D.C. Letter of Reply to Congressional Letter of Inquiry furnished by Shigeki J. Sugiyama, Associate General Counsel.

Letter of Reply to Congressional Inquiry concerning complaint filed by Elaine Mittleman contains the following information: Elaine Mittleman was a Schedule A Employee of the United States Department of the Treasury and complained to the Merit Systems Protection Board in December, 1980 that the changing of her duties, taking away of her office keys, and suggestions that she should look for a new job, were in reprisal for her criticizing the analysis of the Chrysler operating plans and asking hard questions of those plans. Subsequently, the agency

Name	Case Number	Page	Investigation Dates	OPM Use
Mittleman	01448	18		

Locations of Personal Investigation	Locations of Record Sources

terminated her and she claimed that the agency's actions were in reprisal for whistle blowing.

An on-site investigation and review of the Treasury Inspector General's Report of Investigation of the same matters disclosed insufficient evidence to support a charge of whistle blowing or any other prohibited personnel practice. The matter was closed in December, 1981.

Letter signed by Shigeki J. Sugiyama.

Letter contains no further pertinent information.

UNITED STATES MERIT SYSTEMS PROTECTION BOARD, Office of the Special Counsel, 1120 Vermont Avenue, Northwest, Washington, D.C. Informal notes of conduct of investigation furnished by Shigeki J. Sugiyama, Associate General Counsel.

Informal Notes indicate that in a telephonic conversation between Elaine Mittleman and Shigeki Sugiyama, Mittleman suggested that the Department of the Treasury was involved in prohibited personnel practices in attempting to terminate her employment. Sugiyama attempted to clarify her concerns and elicit from her exactly what prohibited personnel practice she thought was involved. Mittleman became abrasive and insisted that it was the responsibility of the Office of the Special Counsel to determine what prohibited personnel practice was involved.

Notes contain no further pertinent information.

SHIGEKI J. SUGIYAMA, Associate General Counsel, Office of the Special Counsel, United States Merit Systems Protection Board, 1120 Vermont Avenue, Northwest, Washington, D.C.

Source identified subject as Elaine Mittleman. Source's contact with subject has solely been in the context of her complaining that the Department of the Treasury was involved in a prohibited personnel practice in attempting to terminate her from her employment. Source's method of contacts with her were telephonic and limited in that nature. Source has absolutely no personal or social knowledge of Mittleman.

Mittleman first called to complain in December, 1980. Source spoke to Mittleman telephonically. Mittleman insisted that her impending termination from Treasury was a prohibited personnel practice and in reprisal for whistle blowing. When pressed to provide a specific instance or provide exactly what the nature of the prohibited personnel practice was, subject could not do so but instead became abrasive and personally cursed and abused source. When source attempted to obtain details of subject's complaint in order to properly investigate that complaint, she could not furnish specific details but only generalizations, stating that the Chrysler Motor Corporation failed to provide all reports required to the Department of the Treasury and thus was in violation of the law.

REPORT OF INVESTIGATION

Property of U.S. Office of Personnel Management

Form 1-1 (Rev. 10-81)

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			OPM Use
Mittleman	C1448	19	

Locations of Personal Investigation | Locations of Record Sources

An investigation by the Office of the Special Counsel was initiated pursuant to that telephone call and several officials of the Department of the Treasury were interviewed. Management officials at the Department of the Treasury indicated that certain ongoing reporting requirements to Chrysler were unnecessary and therefore not required from Chrysler.

The investigation was complicated by three major factors: One was Mittleman's totally abrasive behavior which tended to substantiate Treasury Management Officials allegations that her behavior was erratic. This seemed to substantiate the reasonableness of the Treasury's Management attempts to deal with Mittleman. Two, the belief of some Treasury Managers that Mittleman had leaked sensitive matters to the press or through a United States Congressman. Three, there were no clear indications that Mittleman had engaged in any protected activities under the whistle blowing statutes.

Source had several telephone conversations with subject and noted that in every one her behavior was erratic and abrasive. When source would indicate that there were no findings against Treasury, she would become personally abusive and abrasive to him and source characterizes her tirades as bordering on hysterics.

Source continuously asked her what specifically she was alleging and specifically what part of the law was she alleging had been broken. Source notes that subject was an attorney and should have been able to pinpoint precise portions of statute. Source further notes that at the time Mittleman called she had not yet been terminated and there was no personnel action to complain about. Source further notes that subject was a Schedule A Employee, not entitled to the usual protections afforded career civil servants.

Source received and reviewed a Report of Investigation conducted by the Inspector General of the Department of the Treasury and also had Investigators from the Office of the Special Counsel interview witnesses at the Treasury Department. The results of these interviews were never written up nor was a formal report issued by the Office of the Special Counsel. Based on the report of investigation by the Inspector General, and interviews of Treasury Department officials, the source determined that there were no prohibited personnel practices involved in Mittleman's case and source issued a letter of decision. (See Exhibit G.)

Source notes that subject's behavior toward him seemed to be typical of her behavior as illustrated in the Inspector General's Report from the Department of the Treasury. It seemed to source that subject suffered from a lack of judgement and lack of rationality.

Source notes that he has no other independent knowledge of subject but, based on his conversations with subject and review of reports, he would not hire the subject to work in any sensitive position in the United States Government.

Source states that he can offer no further information.

0008332819 49

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

March 17, 1981

The Honorable Henry S. Reuss
House of Representatives

Dear Mr. Reuss:

Exhibit F

This is in response to your letter of March 6, 1981, to Mr. Staats, concerning the operations of the Chrysler Loan Guarantee Board and Treasury's Office of Chrysler Finance. You posed a series of questions to which you requested that we respond.

It is essential that I make clear at the outset the nature of the responses we are able to provide. Because the Comptroller General is a statutory member of the Chrysler Loan Guarantee Board, our responses to your questions cannot be viewed as the report of an independent auditor, our normal role. In light of our extensive, direct involvement in the actions of the Board, our comments at this time must be taken as the views of a participant, not an outside observer.

Your first set of questions relates to the issue of whether or not Chrysler and the Board conformed to legal requirements concerning financial reporting. I can only respond by saying that we judged that the actions of Chrysler and of the Board were in conformance with the law. Had we judged that the law was being violated in any substantive way, Comptroller General Staats would not have concurred in the Board's actions. I, myself, participated in most of the Board's deliberations and agree with that judgment. Moreover, I would point out that the particular reports upon which your inquiry appears to be based were imposed on Chrysler by the Board through an agreement and not by statute.

While reporting requirements of that agreement may have been satisfied in a somewhat less formal fashion than was anticipated, circumstances simply did not permit otherwise. Indeed, all of us, including Chrysler, would undoubtedly have preferred a somewhat more orderly process. Economic conditions in general, and Chrysler's financial condition in particular, were changing much too rapidly. Had we acted only on the information as it flowed through formal reports, the Board would have been forced to reach decisions on the basis of information which was obviously obsolete. That would clearly have been unwise. Instead, we relied heavily on information gained through continuing (at least weekly and often daily) contact between the Board members, the Board staff, and officials of Chrysler. Whenever possible, that

information was cross-checked against information from other sources, and was reviewed by the Board's independent advisers and consultants.

I am convinced that when Chrysler had information bearing on the deliberations of the Board, we received that information promptly and accurately. At no time did I believe that Chrysler was intentionally withholding or distorting information needed by the Board. Since obtaining prompt and, to the degree possible, accurate information was the presumed purpose of the reporting requirements, I was satisfied that those requirements had been met.

Your second question concerns the operating and financial plans submitted by Chrysler to the Board. Those plans were filed, as required, and did, indeed, depict the company as meeting the statutory test of viability by 1984. Had this not been the case, Comptroller General Staats would not have concurred in the Board's actions. But the Board did not simply accept those plans and act on the basis of what they showed. The plans were not statements of fact, but statements of expectations about the future and of actions which the company anticipated taking in response to those expectations. They involved assumptions and judgments on which experts often disagree. To assure that the Board had the best possible basis for reaching its decisions, the plans were reviewed independently by the Board members themselves, staff of the Board members, the separate staff to the Board, and the Board's consultants and advisers. In the course of these reviews, many questions were raised about the assumptions underlying the plans and about Chrysler's anticipated actions based on those assumptions. As these discussions progressed, each of the plans was revised several times by Chrysler. In each case, the plan as finally submitted in support of a Board action was one which the Board judged was a reasonable basis for concluding that Chrysler could be viable by 1984.

Your final question concerns the wisdom of making the Comptroller General a statutory member of the Board. In my opinion it is a mistake to involve the Comptroller General as a central participant in the execution of programs such as the one established to provide Government assistance to the Chrysler Corporation. By involving the Comptroller General as an active participant, and as a consequence the services of GAO staff, it is clear that the Congress has denied itself the means for obtaining an independent audit of the Board's activities through the General Accounting Office to which the Congress would normally turn for that purpose.

As your question in this regard states an interest in Mr. Staats' views based upon his experience as a member of the Chrysler Loan Guarantee Board, I have asked whether he might wish to respond personally and he has agreed to do so.

You will be hearing from him by separate letter.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

3(5) Index Digest
Rm. 7510

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-197380

JUN 4 1981

The Honorable Henry S. Reuss
Chairman, Joint Economic Committee
House of Representatives

Exhibit G

Dear Mr. Chairman:

In response to your letter of March 31, 1981, we have enclosed a compilation of documents pertaining to the operations and interactions of the Chrysler Corporation Loan Guarantee Board, the Office of Chrysler Finance, and the Chrysler Corporation.

Prior to June 24, 1980, no formal agreements had been executed between Chrysler and the Loan Guarantee Board (Board). Thus, no reporting requirements existed until that date. Formal submission of documents began in July 1980.

DOCUMENTS INCLUDED IN ATTACHMENTS

At Tab 1, you will find a comparison chart of the successive profit and loss estimates that Chrysler made over the time that it was applying for loan guarantees last year and this year. This series of estimates was derived from operating and financing plans submitted by Chrysler for consideration by the Board. Final approved plans are noted by asterisks.

At Tab 2 is a listing of the monthly performance certificates showing dates of receipt and whether performance was in compliance with an approved plan. Copies of the certificates are also included. These performance certificates are required by the Memorandum of Operating and Financing Plan Procedures and Requirements (the Procedures Memorandum), dated June 24, 1980. Chrysler's performance had, by December 1980, diverged greatly from the July 10, 1980 Plan, the last previously approved Plan. The Loan Board staff does not, to the best of our knowledge, have a performance certificate for the month of December 1980. Although Chrysler submitted performance reports for the months of October and November, it could not certify such performance as being in compliance with plan.

The Board did not agree with Chrysler's decision not to submit its December performance certificate and required Chrysler to submit a performance certificate for the month of January. In that performance certificate, the Company stated it could not certify compliance within the tolerances of the July 10, 1980 Plan. The Company submitted new operating and financing plans dated December 5, 1980.

At Tab 3 are monthly profit and loss projections. Table III lists the dates of their submission. Where monthly profit and loss projections were not submitted, there were other documents that contained acceptable substitute projections.

At Tab 4 are copies of all opinions of Chrysler's management consultant, financial adviser and auditor as delivered each of the three times that Chrysler's requests for loan guarantees were approved by the Board, plus Chrysler's Plan certifications delivered at the same times.

At Tab 5 are listings of all waivers granted by the Board before and at the approval for the third drawdown of $400 million in loan guarantees on February 27, 1981, plus supporting opinions. These listings are contained in three documents. The first is a Board staff memorandum of November 20, 1980, which outlines a number of reporting requirement problems recommending waivers of certain requirements. The second is Annex A to the Board resolutions of January 19, 1981, which grants certain waivers. The third document is a listing of the previous waivers granted plus additional waivers requested as part of the findings of February 27, 1981. The additional waivers were granted by the Board as part of its approval of findings.

Tab 6 covers a copy of the reconciliation document due 120 days after the close of Chrysler's fiscal year on December 31, 1980. This reconciles Chrysler's actual 1980 performance to the February 27, 1981 Plan (the latest approved plan). The quarterly reconciliations that were due August 15, 1980 and November 15, 1980, are included. The consultant's opinions delivered on July 31, 1980, cover the August 15 reconciliation (Tab 5, Memo of November 20, 1980, p. 3-4). The November 15 consultant's opinions were waived (Tab 5, February 27, 1980, Sec. 5(a)(9) findings, p. 6). The opinions of the consultant and financial adviser, required by the Agreement to Guarantee as part of the reconciliation of 1980 performance to the February 27 Plan are also included.

OTHER MATTERS RAISED IN YOUR LETTER

You will note from the reports of Chrysler's auditor, consultant and financial adviser contained under Tab 4, that Chrysler's auditor, Touche Ross & Co. said it could not render an opinion on the fairness of presentation of Chrysler's financial statements in its report of February 27, 1981.

In response to inquiries by the Board, Touche Ross said "One of the principal elements in our decision to disclaim an opinion on the fairness of the financial statements is the uncertainty about the December 31, 1980, carrying value of Chrysler's assets and liabilities in light of the ongoing restructuring of the

Corporation." It was Touche's opinion that the restructuring that was taking place was not a normal commercial way to realize assets and liquidate liabilities and, therefore considerably more uncertainty than usual was associated with the December 31, 1980 valuation of balance sheet items.

You raised a question concerning Board approval of the Chrysler Operating Plan and a loan guarantee to the Corporation in light of the Touche Ross disclaimer of opinion. The Chrysler Loan Guarantee Act of 1979 required a determination by the Board that the Company could remain commercially viable with loan guarantees until 1983 and without additional loan guarantees thereafter. As noted, one of the principal reasons for Touche's disclaimer of opinion was the uncertainty caused by the restructuring that was taking place. The Board constantly dealt with projections about what the future might hold for the Chrysler Corporation under varying assumptions. Indeed, the very restructuring which gave rise to Touche's disclaimer was imposed by the Board, along with labor and supplier concessions, as a precondition to approval of further loan guarantees. In the opinion of the Board, meeting these preconditions was essential to the Corporation having a chance of attaining long-term viability.

In response to your final question about requests by the Board for modifications to Chrysler's operating and financing plans, the compilation of profit and loss estimates depicts a record of continuing dialogue between Chrysler and the Loan Board over the past 16 months. As I noted in my letter of March 17, 1981, neither the Board nor its staff accepted the plans that were submitted without intensively analyzing their assumptions and requiring necessary revisions. Referring to the information contained under Tab 1, it is evident from the large number of drafts and the evolution of projections that the Board and staff were in constant touch with the Corporation. At no time has the situation warranted Board-sponsored appointment or election of additional members to Chrysler's Board of Directors.

In accordance with agreements with your office, we are providing copies of this letter to the Secretary of the Treasury and the Chairman of the Federal Reserve Board. We plan no further distribution. Chrysler Corporation has advised us that they consider the enclosed documentation to contain proprietary, confidential information. In view of this advice, we direct your attention to the prohibition concerning the disclosure of such information contained in 18 U.S.C. 1905.

B-197380

We hope this satisfies your request. If we can be of further assistance, please do not hesitate to contact us.

Sincerely yours,

MILTON J. SOCOLAR

Acting Comptroller General
of the United States

bc: Mr. Heller (OCG)
Mr. McCormick (OP)
Mr. Fitzgerald (OCR)
Mr. Van Cleve (OGC)
Mr. Havens (OCG)
Mr. Myers (PAD)
Deputy Director (PAD)
Mr. Corazzini (PAD)
Mr. Simmons (PAD)
Mr. Espada (PAD)
Legislative Digest
Index Digest
Index and Files

Note 17. Income Maintenance Agreement with Chrysler Financial Corporation

Chrysler Corporation and Chrysler Financial Corporation (a wholly-owned unconsolidated subsidiary) have an Income Maintenance Agreement expiring December 31, 2000, to maintain Chrysler Financial Corporation's ratio of income before taxes available for fixed charges at no less than 125% of fixed charges on an annual basis.

Payments of $106.4 million were made pursuant to the agreement in 1980, $52.8 million in 1979, and no payments were required under the agreement in 1978. The effect of this fee on both selling and administrative expense and equity in net earnings of unconsolidated subsidiaries is eliminated upon consolidation of the statement of operations of Chrysler Corporation and its consolidated subsidiaries.

Note 18. Per Share Data

Losses per share of common stock are computed using the average number of shares outstanding during the period. The net loss is adjusted for the dividend requirement on preferred shares in making the loss per share of common stock calculation.

Note 19. Inflation Accounting

Pursuant to Standard No. 33, "Financial Reporting and Changing Prices" of the Financial Accounting Standards Board, refer to page 28 of this report for supplementary disclosure of certain information intended to measure the impact of changing prices due to inflation.

Accountants' Report

Shareholders and Board of Directors
Chrysler Corporation, Detroit, Michigan

We have examined the accompanying consolidated balance sheet of Chrysler Corporation and consolidated subsidiaries at December 31, 1980 and 1979, and the related consolidated statements of operations, additional paid-in capital, net earnings retained, and changes in financial position for each of the three years in the period ended December 31, 1980. Our examinations were made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The Corporation has incurred substantial losses in 1979 and 1980, and as more fully described in Note 2, the continuation of the Corporation is dependent upon a return to sustained profitable operations and availability, if needed, of additional financing or concessions. The Corporation's ability to achieve sustained profitability will be affected by many factors which are beyond its control such as the automobile market conditions, actions of competitors, availability of consumer financing, interest rates, other economic conditions and government regulation. Although the Corporation has been able to fund its losses through liquidation of assets, federally guaranteed loans and concessions from its lenders, employees, and suppliers (which activities are characteristic of a company being restructured), deterioration in the Corporation's financial condition during 1980 has diminished its ability to absorb losses without further restructuring. As the Corporation further develops and executes strategies for a return to sustained profitable operations, and as a special committee of the Board of Directors reviews alternative methods for obtaining infusions of new capital, future actions may result in adjustments of assets and liabilities and changes in the relative interests of the Corporation's equity owners, in amounts that could be significant in relation to the accompanying financial statements. The foregoing matters raise a question as to whether the use of generally accepted accounting principles applicable to a going concern is appropriate in the circumstances.

In addition, the [illegible] its negotiations for an industrial [illegible] agreement with Peugeot S.A. (see Note 7), and [illegible] to raise its 14% ownership in Peugeot [illegible]. However, the carrying value of the Peugeot stock may require adjustment [illegible] changes.

In our opinion, the accompanying financial statements have been prepared in conformity with generally accepted accounting principles applicable to a going concern applied on a consistent basis except for the capitalization of interest in 1980 with which we concur (see Note 11). The financial statements do not purport to give effect to adjustments, if any, that may be appropriate in [illegible] the Corporation be unable to operate as a going concern and therefore be required to realize its assets and liquidate its liabilities, contingent obligations and commitments in other than the normal course of business and at amounts different from those in the accompanying financial statements.

In view of the uncertainties and the ongoing restructuring described in the preceding paragraphs, we are unable to express an opinion as to whether or not the accompanying financial statements are presented fairly because we are unable to determine whether or not the use of generally accepted accounting principles applicable to a going concern is appropriate in the circumstances.

TOUCHE ROSS & CO.
Certified Public Accountants

February [illegible], 1981, Detroit, Michigan

Carnegie Mellon

Graduate School of Industrial Administration
William Larimer Mellon, Founder
Carnegie Mellon University
Pittsburgh, PA 15213-3890
412 268 2303

Yuji Ijiri
Robert M. Trueblood Professor of
Accounting and Economics

February 26, 1987

Ms. Elaine J. Mittleman, Esq.
2040 Arch Drive
Falls Church, VA 22043

Dear Elaine:

Impact of a qualified opinion varies greatly depending upon whether or not the investors and the market have already known the underlying facts that caused qualification. In the case of Chrysler, the risk of bankruptcy was well known and the auditor's qualification must have been almost anticipated.

Once it was determined that an entity is not a viable entity as a "going-concern," financial statements should be prepared under the "liquidation mode," which means that all assets must be marked down to expected disposal values. The auditor was, in this case, unable to decide which mode (going-concern vs. liquidating-concern) should be used. An implication is that "(1) the above statements are fine as a going concern but (2) don't sue us should Chrysler go bankrupt."

Some may argue whether (1) can be implicit in the auditor's statement, but to me the auditor should be saying something positive and concrete for the services they rendered.

It was nice to see you at the GSIA 35th Anniversary. Come back and see us when you have a chance to come to Pittsburgh.

Sincerely,

Yuji Ijiri

Exhibit I

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Stanford, California 94305-6010

March 16, 1987

Ms. Elaine J. Mittleman
Attorney at Law
2040 Arch Drive
Falls Church, Virginia 22043

Dear Ms. Mittleman:

Thank you for your letter of March 3, 1987, and the accompanying documents. Your case, while most regrettable and tragic from your personal point of view, is unfortunately not an unexpected or untypical result of government activities in areas where government has no business acting.

I wish you every success in your suit, but I am skeptical that you will be successful in view of the enormous obstacles that will be placed in your way. Unfortunately, I am afraid that there can seldom if ever be real protection for whistle blowers given the self-interest of the persons on whom the whistle is blown.

Your case certainly is additional evidence of the costs of activities such as the Chrysler bail-out.

Sincerely yours,

Milton Friedman
Senior Research Fellow

F:v

Exhibit J

STATEMENT OF JOSEPH P. SMITH, JR., FORMER INTERNAL REVENUE SERVICE EMPLOYEE, LAS VEGAS, NV

Mr. SMITH. The Internal Revenue Service is one of the most powerful enforcement authorities in the world. Its powers are awesome. I know because I was a Senior Revenue Officer and Manager for 18 years in the Collection Division of the Internal Revenue Service.

I have been requested to focus my testimony on Section 6 of the Omnibus Taxpayers' Bill of Rights Act, the basis of evaluation of employees. I would ask, Mr. Chairman, that the record remain open so that I can prepare a lengthy assessment of problems in the Internal Revenue Service for use by the subcommittee.

Senator PRYOR. This record will remain open. We look forward to hearing from you further on that subject.

Mr. SMITH. Thank you, Mr. Chairman.

Up to the day I left the IRS in August of 1984 to open my own tax practice, production was always the name of the game. It always has been, and it appears it always will be.

The IRS will tell you that quality is the name of the game and that employees are not promoted on the basis of enforcement statistics. That is simply not true. The ability of a revenue officer to close cases, collect money, and make seizures are the essential elements for promotion. I have sat personally on many a promotion panel where the first question of the panel members in reviewing the qualifications of these employees for promotion is: How many seizures has this revenue officer made in the last six months? And what is his production rate?

To emphasize the importance of the reality of statistical accomplishments, I would like to share with you my personal experiences. A collection division chief who runs the State of Nevada for the Internal Revenue Service stood up in front of many revenue officers during one of my last conferences in 1984 and said: The Las Vegas District was the lowest in production in the Western Region of the United States. He said that his job was on the line unless the statistics improved significantly. He said that we had to improve production. He said that if he was removed because of low production and low seizure activity, he was going to take a lot of people with him when he goes.

The IRS will explain away this problem in saying that this was local in nature, and didn't reflect the way things were in the Service as a whole. Yet the problem for the division chief was the fact that he was compared statistically to all Western Region collection divisions.

He was the last in production. If statistics were not critical, why would one district be compared to another, and why would being last in statistical accomplishments jeopardize his job and result in threats of retaliation to front-line managers and front-line employees? As late as the day I left the IRS in August of 1984, enforcement statistics was where it was at. Don't waste time on complex cases. Just collect the money, close the cases, and seize.

In the past few months, I have had revenue officers tell me in a rather boastful but respectful way that they had two seizures or four seizures, et cetera. One of them told me that the district had

more seizures than anyone else and was in a position of leading the region in seizures. I know that feeling.

But if enforcement statistics are not important, then why do revenue officers and managers put so much emphasis on them? Why is it important to know how many seizures in the Western Region the district has?

Mr. Chairman, revenue officers are selected for promotion based on their ability to close cases, collect money, and make seizures. If a revenue officer does quality work—emphasize that: does quality work—but doesn't close cases or seize, he won't get promoted.

In closing, I support the provisions of Section 6 of the Omnibus Taxpayers' Bill of Rights Act, along with the other proposed provisions.

Senator PRYOR. Mr. Smith, thank you.

[The prepared written statement of Mr. Smith follows:]

TESTIMONY PROVIDED BY:
JOSEPH B. SMITH, JR., PRESIDENT
THE TAX MANAGEMENT CORPORATION, INC.
330 SOUTH THIRD STREET, SUITE 970
LAS VEGAS, NEVADA 89101

THE INTERNAL REVENUE SERVICE IS ONE OF THE MOST POWERFUL ENFORCEMENT AUTHORITIES IN THE WORLD. IT'S POWERS ARE AWESOME. I KNOW BECAUSE I WAS A SENIOR REVENUE OFFICER AND MANAGER FOR EIGHTEEN YEARS IN THE COLLECTION DIVISION OF THE IRS. I HAVE BEEN REQUESTED TO FOCUS MY TESTIMONY ON SECTION 6 OF THE OMNIBUS TAXPAYERS' BILL OF RIGHTS ACT "THE BASIS FOR EVALUATION OF IRS EMPLOYEES".

UP TO THE DAY I LEFT THE IRS IN AUGUST 1984 TO OPEN MY OWN TAX PRACTICE, PRODUCTION WAS ALWAYS THE NAME OF THE GAME. IT ALWAYS HAS BEEN AND IT APPEARS IT ALWAYS WILL BE. THE IRS WILL TELL YOU THAT QUALITY IS THE NAME OF THE GAME AND THAT EMPLOYEES ARE NOT PROMOTED ON THE BASIS OF ENFORCEMENT STATISTICS. THAT IS NOT TRUE. THE ABILITY OF THE REVENUE OFFICER TO CLOSE CASES, COLLECT MONEY AND MAKE SEIZURES ARE ESSENTIAL ELEMENTS FOR PROMOTION. I HAVE SAT ON MANY A PROMOTION PANEL WHERE THE FIRST QUESTION OF PANEL MEMBERS WAS, "HOW MANY SEIZURES HAS THE REVENUE OFFICER MADE IN THE LAST SIX MONTHS?", AND "WHAT IS HIS PRODUCTION RATE".

TO EMPHASIZE THE IMPORTANCE OF THE REALITY OF STATISTICAL ACCOMPLISHMENTS, I WOULD LIKE TO SHARE WITH YOU MY PERSONAL EXPERIENCES.

A COLLECTION DIVISION CHIEF STOOD UP IN FRONT OF MANY REVENUE OFFICERS DURING ONE OF MY LAST CONFERENCES IN 1984, AND SAID THE LAS VEGAS DISTRICT WAS THE LOWEST IN PRODUCTION IN THE WESTERN REGION. HIS JOB WAS ON THE LINE UNLESS THE STATS IMPROVED SIGNIFICANTLY. HE SAID THAT WE HAD TO IMPROVE PRODUCTION. HE SAID THAT IF HE WAS REMOVED BECAUSE OF THE LOW PRODUCTION, AND LOW SEIZURE ACTIVITY, HE WAS GOING TO TAKE A LOT OF PEOPLE WITH HIM.

THE IRS WILL EXPLAIN AWAY THIS PROBLEM AND SAY THAT THIS WAS LOCAL IN NATURE AND DIDN'T REFLECT THE WAY THINGS WERE IN THE SERVICE AS A WHOLE. YET THE PROBLEM FOR THE DIVISION CHIEF WAS THE FACT THAT HE WAS COMPARED STATISTICALLY TO ALL THE OTHER WESTERN REGION DISTRICTS. HE WAS THE LAST IN PRODUCTION AND HAD THE LOWEST SEIZURE ACTIVITY. HE WANTED PRODUCTION AND SEIZURES. IF STATISTICS WERE NOT CRITICAL, WHY WOULD ONE DISTRICT BE COMPARED TO ANOTHER AND WHY WOULD BEING LAST IN STATISTICAL ACCOMPLISHMENTS JEOPARDIZE HIS JOB AND RESULT IN THREATS OF RETALIATION TO FRONT LINE MANAGERS AND FRONT LINE EMPLOYEES?

THAT SAME DIVISION CHIEF TOLD THE MANAGERS TO LIST ALL EMPLOYEES IN THE GROUPS BY ABILITY; DRAW A LINE IN THE MIDDLE AND START TO GET RID OF EVERYONE BELOW THE LINE.

AS LATE AS THE DAY I LEFT THE IRS IN AUGUST 1984, ENFORCEMENT STATISTICS WAS "WHERE IT WAS AT". DON'T WASTE TIME ON COMPLEX CASES. JUST COLLECT THE MONEY, CLOSE THE CASES AND SEIZE.

THE IRS WILL TELL YOU THAT QUALITY HAS REPLACED STATISTICS AS THE YARDSTICK OF ACCOMPLISHMENT. BUT, I THINK THAT RECENT RECORDS AND ACTION WILL SHOW OTHERWISE.

IN A LETTER TO ALL ASSISTANT REGIONAL COMMISSIONERS, THE ASSISTANT COMMISSIONER FOR COLLECTIONS STATES IN HIS AUGUST 1986 LETTER CONCERNING THE PROGRAM MANAGEMENT OBJECTIVES FOR ALL IRS COLLECTION EMPLOYEES:

> ATTACHED IS THE COLLECTION PROGRAM LETTER FOR FISCAL YEAR 1987. THIS DOCUMENT TRANSMITS FOUR PRIMARY OBJECTIVES THAT EVERY COLLECTION EMPLOYEE SHOULD STRIVE TO ACHIEVE. THESE OBJECTIVES ARE IMPROVE THE QUALITY OF WORK, ENHANCE EMPLOYEE MORALE, INCREASE REVENUE COLLECTION YIELD, AND PROMOTE VOLUNTARY COMPLIANCE...(THESE OBJECTIVES)...FORM A LONG RANGE PLAN WHICH ADDRESSES THE MISSION OF THE SERVICE...MANAGERS SHOULD REFLECT THESE GOALS IN EXPECTATIONS AND ARE ENCOURAGED TO ADVISE THEIR EMPLOYEES FREQUENTLY THROUGHOUT

> THE YEAR ON PROGRESS TOWARDS ACHIEVING THE GOALS.

FURTHER, THE ASSISTANT COMMISSIONER GOES ON TO STATE:

> A SIGNIFICANT CHANGE TO THE PROGRAM LETTER THIS YEAR INVOLVES THE ELIMINATION OF ALL NUMERIC OBJECTIVES. WE HAVE ELIMINATED THEM, NOT TO DEEMPHASIZE THEIR USES, BUT TO PUT THEM IN PROPER PERSPECTIVE -- THAT STATISTICS SHOULD BE USED AS INDICATORS, NOT AS ABSOLUTE MEASURES OF PROGRAM EFFECTIVENESS.

UNFORTUNATLEY, THE GOOD INTENTIONS OF THE ASSISTANT COMMISSIONER ARE INTERPRETED QUITE DIFFERENTLY AT THE OPERATIONAL LEVEL. THEY ARE TURNED INTO DOUBLE TALK. WE ELIMINATE ALL STATISTICAL OBJECTIVES, BUT WE ARE GOING TO KEEP ALL THE STATISTICS TO MEASURE PROGRAM EFFECTIVENESS IN A RELATIVE WAY. IN OTHER WORDS, WHO IS COLLECTING THE MONEY, CLOSING THE CASES AND SEIZING THE ASSETS. IN THE PAST FEW MONTHS, I HAVE HAD MANY REVENUE OFFICERS TELL ME IN A BOASTFUL WAY THAT THEY HAD TWO SEIZURES, OR FOUR SEIZURES, ETC. ONE OF THEM TOLD ME THAT THE DISTRICT HAD MORE SEIZURES THAN ANYONE ELSE AND WAS IN A POSITION OF LEADING THE REGION IN SEIZURES. YOU ASK A REVENUE OFFICER HOW MANY SEIZURES HE HAD HE KNOWS IMMEDIATELY. HE CAN TELL YOU WHO IS LEADING IN SEIZURES IN THE GROUP. IF ENFORCEMENT STATISTICS ARE NOT IMPORTANT THEN WHY DO REVENUE OFFICERS AND MANAGERS PUT SO MUCH EMPHASIS ON THEM?

AS THE JOKE IN THE OFFICE USED TO GO: THE NAME OF THE GAME IS QUALITY. LOTS AND LOTS OF QUALITY. IF YOU HAVE LOTS OF GOOD STATISTICS YOU MUST HAVE LOTS OF GOOD QUALITY. THE IRS EQUATES INCREASED PRODUCTION AND INCREASED SEIZURES WITH INCREASED QUALITY. IF YOU HAVE MORE STATISTICAL ACCOMPLISHMENTS, THE QUALITY OF YOUR WORK SHOWS IMPROVEMENT.

REVENUE OFFICERS ARE SELECTED FOR PROMOTION BASED UPON THEIR ABILITY TO CLOSE CASES, COLLECT MONEY AND MAKE SEIZURES. IF THEY DON'T HAVE LOTS AND LOTS OF UNITS OF QUALITY AND SEIZURES, THEY WON'T GET PROMOTED.

IN CLOSING, I SUPPORT THE PROVISIONS OF SECTION SIX OF THE OMNIBUS TAXPAYERS' BILL OF RIGHTS ACT, ALONG WITH THE OTHER PROPOSED PROVISIONS.

Senator PRYOR. I read an article some while back in preparation for working with Senator Reid and Senator Grassley and others on this legislation. I read an article entitled "Fear the IRS." You may or may not have read this particular piece. I found it very good.

You were with the Internal Revenue Service for 18 years.

Mr. SMITH. Yes, sir.

Senator PRYOR. You are now in private practice?

Mr. SMITH. Yes, sir.

Senator PRYOR. The average individual taxpayers in America, do they have a reason to fear the Internal Revenue Service?

Mr. SMITH. Absolutely, Senator. It is an awesome organization. The powers are basically unchecked; and as a result of that, the ordinary citizen doesn't have the sophistication or the understanding of what their rights are; and they will go to the Internal Revenue Service and say: What should I do? It is a little bit like saying the fox is in charge of the henhouse.

The point is I don't think it is a proper thing for people to go to the Internal Revenue Service and say what should I do. There must be a vehicle—some vehicle—where the ordinary citizen can go and say: Look, I see a problem with the system; I see something breaking down, and I need help. This is what I think this bill will provide, sir.

Senator PRYOR. I talked to some officials in the Internal Revenue Service, and I said: Tell me about the Ombudsman Program in the Internal Revenue Service. It was established to assist the taxpayer, to sort of guide the taxpayer through, let's say, the bureaucracy. What about the Ombudsman system?

Mr. SMITH. They call that the Problem Resolution Office. I would like to be able to rank it and say that, generally speaking, it is a fairly effective program. However, in my dealings with them—after I get their attention, which doesn't take too long to get—the fact is they are very, very hesitant to stop taking action because the enforcement mode, if you want, they are on a roll. And as a result, they are going on and on and on.

And you go to the Problem Resolution Office, and the Problem Resolution Office goes to the revenue officer or to the group manager and says: Wait a minute; we have a problem here. The group manager and the revenue officer say: Wait a minute; that is a dilatory action. We are on a roll here. We are taking decisive enforcement action. We have got to get the assets now.

So, therefore, it is inherent in the organization in the enforcement aspects that they don't want to stop what they are doing. What they want to do is collect the taxes.

So, therefore, unless you have an overriding case, generally speaking they don't want to stop. So, what we need is a reorganization, an organization where we can just tell the Internal Revenue Service to stop in order to give us an opportunity to review the facts so that we can decide on whether or not this ordinary person—this middle America—has an opportunity—or let's put it this way, has a case.

Where else can that person turn, Senator? There isn't anything anywhere for them to turn. You must provide a vehicle for these people to be able to go to and say: Help me; I don't know what is going on with the system, and it is wrong; but I can't stop them.

How do I stop them? This is what your bill—what Senator Reid's bill—is going to accomplish; this is going to accomplish that end, and it is a right thing. It is a good thing.

Senator PRYOR. Excellent. Mr. Smith, do you think that most taxpayers understand their rights? Do they know what their rights are when they are being called in for an audit or for a session with the Internal Revenue Service?

Mr. SMITH. Senator, let's put it this way: I am an expert, and sometimes when I read them, I don't know what in the name of heaven they are telling me. It is double talk. [Laughter.]

They give you your rights, and they give you a piece of paper; and they explain 22 items on it. You have to be a tax expert to even understand what in the name of heaven it means. Have you ever seen an audit report? It is incredible. An ordinary person is told: Here it is right here; subsection 22 says—Senator, it is a joke. There is no clear communication in layman's terms.

Yes, they send you a piece of paper that says you have the right to go to tax court. You have the right to have this; you have the right to have that. They don't understand, Senator. The ordinary person does not understand what this means.

Senator PRYOR. Senator Reid.

Senator REID. Thank you, Mr. Chairman. A couple of questions, Mr. Smith. You stated in your testimony that you served the IRS for 18-plus years. Could you tell the committee what positions you have held with the Service, and give us some ideas of your feelings about the Internal Revenue Service?

Mr. SMITH. Yes, Senator Reid. I started off in Chicago in 1967 as a Field Revenue Officer in the Collection Division at the journeyman, technical and super-technical levels. I worked my way into Special Procedures Section as an advisor to field revenue officers, when they needed technical advice or legal advice. I was a manager at the first and secondary levels. I was the Chief of the Taxpayer Service Section in the Chicago District. I was the Assistant Chief of Office Branch Operations with a staff of approximately 200 employees.

I was a Regional Analyst on the staff of the Assistant Regional Commissioner for Accounts Collection and Taxpayer Service. The job basically involved performing managerial reviews of all Collection Division operations in the Western Region of the United States. And I was admitted to the top level management program, qualified to manage branch or division operations.

Concerning my attitudes about the Service, and I think this is important in our process, I wish to underscore that the IRS is really a top professional organization. It performs a great service for this country. Its people are hard working; they have integrity. The Service does an outstanding job. And also, I am very proud of my service with the Internal Revenue Service. I learned much and I matured.

But there are many areas that need to be corrected to ensure fair and equitable administration of the tax laws, Senator.

Senator REID. Your testimony focused on Section 6 of the bill, and I want to ask your comments about other sections; but before doing that, in your experience during the time you were with the Service and since you have left the Service some three-plus years

now, do you have any documents supporting some of the statements you have made? That would be that collection is important and that the agents will be looked to for the money they collect.

Mr. SMITH. Yes, sir, Senator, let's put it this way. As far as the actual collection, I don't have any documents per se; but I know that they are evaluated on the basis of their ability to be able to prove that, Senator.

Senator REID. Do you have any papers or documents that indicate instructions given to agents that collection is important?

Mr. SMITH. Yes, sir. I have this document, and a little piece is off here on the corner; the reason why I took that off is that I didn't want to get anybody in trouble. I was privy to some information concerning directions by a group manager to her employees on how to or: When to seize, what to seize, and why to seize. I think it is extremely important, Senator, to listen to this document. This is the instructions of the manager to the employees within the group. This isn't something that happened, say, four years ago. This happened like 60 days ago.

Senator PRYOR. Now, this is from the IRS?

Mr. SMITH. Oh, this is their notes.

Senator PRYOR. And it is written to whom?

Mr. SMITH. This is to the revenue officers within the group. This is the manager's notes, and it says:

"When to seize." This is beautiful, incredible. "As soon as possible after demand has been made and not resulted in the payment." That is in direct violation of the policy statement of the Commissioner. Seizure is the last action to be taken, not the first. And also, it is underlined "as soon as possible." But the second one, Mr. Chairman, the second point is a better point.

It says: "The object should be to put as little space between his back and the wall as possible." Senator, this was issued 60 days ago by a manager of the Internal Revenue Service, giving direction to revenue officers in that group that have unchecked authority to do any damned thing they want. This is the instructions. "The object should be to put as little space between his back and the wall as possible."

In other words, the first thing that you do is get the money and then you nail the taxpayer to the wall. You know what? This is not my words. This is the manager's words and instructions in writing to revenue officers in that group.

But that is just previews of coming attractions.

[Laughter.]

I have another piece of paper, Senator, which is equally as interesting. Excuse me—I have to prepare for this one. [Laughter.]

I guess everyone is ready. All right.

Senator PRYOR. I think that you had better prepare for a lot of talk shows to come.

[Laughter.]

And I must say that I hope on April 15th, when you send your own tax return—

[Laughter.]

Senator, I wish to assure you that I have been identified for greatness by the IRS.

[Laughter.]

That is why I am very large. When I walk through the door, no light shows through. They know I have arrived.

But let's make the other point, Senator, and this is important. I won't even show this to the camera because what I am afraid of is that the person who gave me this, who is a really decent, honest, thoughtful human being—who wanted to do what is right—I am fearful that there will be grave retaliation against this person. It is wrong, Senator, and I will do my utmost if anything happens to protect them, and I hope that Senators Pryor and Senator Reid would use their authority to protect that person, please.

We have a point to make. It says here:

Seizure meeting. January 29, 1987.

It is just notes, and it says:

Fully encumbered vehicles; seize them. We can release it to the lienholder, require the lienholder to pay storage and towing fees. 2. Leased vehicles. Seize the taxpayer's lease holding interests.

I don't have a problem with that, but here is what I have a problem with.

If no interest, release to the lessor, the costs same as above.

3. Private premises. If we have cases where a taxpayer has no assets, consider a writ of entry to seize the furniture.

And I would add, the bed, the TV, the refrigerator, the lamps. Now, let me tell you something, Senator, and I think that this is an extremely important point. I want to make a couple of points.

I know these people in the Internal Revenue Service personally—personally. Many of them are my friends. They are good people. I want you to know that. They are good people. They are dedicated professionals. They are good at what they do. They have integrity. I want you to underscore that, Senator. They have integrity, but they are doing this. And do you know why? Because they were told to do this, because they were told that it was right to do this.

But you gentlemen and I know it is wrong. Now, let me tell you why it is wrong. The Internal Revenue Manual has the guidelines, and it says here in 5612.2.1—that is technical stuff:

The revenue officer must determine that there is sufficient equity in the property to seize, to yield net proceeds from sales to apply to unpaid tax liabilities.

Mr. Chairman, when they go out and seize—this is just incomprehensible to me, that a manager could allow that to happen, to sit there and say if you have a fully encumbered vehicle; that means a vehicle with no equity whatsoever. In other words, if they were to seize that vehicle, Senator, it means there would be no monetary result accruing to the Government other than the fact that you would incur expenses and you would waste time. So, in other words, there is no monetary benefit. And do you know what the bottom line is, Senator? The bottom is they are doing this to harass the taxpayers.

Regardless of what they may say, an intelligent human being, a top professional, looking at this set of facts, a jury of peers reviewing this would draw that intelligent conclusion.

Senator PRYOR. A couple of quick questions. I know Senator Reid has more, and Senator Grassley has more; but just a few quick questions. Has IRS become an organization of bounty hunters?

Mr. SMITH. No, no. I think that what happens—and here is where the problem occurs, and this is just my overall assessment. You get caught up emotionally in championing the cause of voluntary compliance. In other words, you want to be a tough cop—they have lost the fairness—but you want to be a tough cop. You want to go out there and demonstrate to the public—and this is important—understand the underlying philosophy—you want to go out and demonstrate to the public that tax protesting movements or not paying their taxes is wrong, that as a part of the American citizenry, as a part of the American Government, you must pay your taxes.

And therefore, they go out and use this enforcement tool to demonstrate to other people who see the bloody body going down the street that this is in effect a deterrent to noncompliance. If you go out there, or the Internal Revenue Service goes out and plasters these beautiful red warning signs all over a car, bolstered up with three or four revenue officers with badges all over the place, you go to your next door neighbor and say: What happened? That is the Internal Revenue Service, and he didn't pay his taxes. And man, if I were you, I would go pay my taxes.

And they get caught up in that, Senator, and it is not that they are bad people. It is the emotional roll of being a force to bring about compliance through using the enforcement tools that you have. Critically important.

Senator PRYOR. Speaking of neighbors, your neighbor to your left, Mr. Thomas Treadway—and you heard his statement earlier in this hearing?

Mr. SMITH. Yes, I did, sir.

Senator PRYOR. Are there a lot of Thomas Treadways in America today because of the Internal Revenue Service?

Mr. SMITH. Let me explain something, Senator. I am going to answer your question, but I want to preface it with something. My practice has been primarily limited to Nevada; but because of the positive good I have done, my practice now is all over the United States. I travel all over the United States helping people. The answer to the question is yes. There are a lot of Treadways in the United States.

But I think it is extremely important here, Senator, and I have some notes here—if I may read just a comment here?

Senator PRYOR. I want to yield to my colleagues, too, but you go ahead. I know they find this very constructive and informative also.

Mr. SMITH. All right. Ninety to ninety-five percent of the time the IRS operates perfectly. You have got to understand that. They operate perfectly 90 to 95 percent of the time. But there is what I call a mortality factor of six to eight percent where the system breaks down, and then taxpayers have nowhere to go to get relief, to get their rights. Eight is a small percentage, but it represents large numbers of people in trouble with nowhere to go when the system breaks down. There needs to be some way when the taxpayer can turn to the IRS and say stop. If no provision of the bill is

passed other than the creation of this Ombudsman concept, we have taken a long step. We have gone a long way to protect the rights of middle class America, Senator. We are not talking about repudiation of the Internal Revenue Service.

We are talking about the recognition that big systems have the propensity to break down. All this bill is—and I laud you Senators who had the courage to stand up to do this kind of thing because the need is so great. We are talking about not a repudiation of the system; we are not talking about shackling the Internal Revenue Service.

We are talking, as intelligent human beings, recognizing the need to fill and to plug a gap that is missing. This bill provides the vehicle, the opportunity, to fill a gap, a void, that the Internal Revenue Service probably can't handle and would not be in a position emotionally to handle.

Senator PRYOR. Thank you. Senator Grassley?

Senator GRASSLEY. Yes. Mr. Smith, is productivity of IRS agents measured by how many cases are handled or actually closed or by the amount or percentage of delinquent taxes collected?

Mr. SMITH. Yes, sir.

Senator GRASSLEY. And all of those?

Mr. SMITH. Yes, sir.

Senator GRASSLEY. All right. In your opinion, what would be an effective method of evaluating IRS collection agents on performance and for promotion?

Mr. SMITH. I think an effective method would be to evaluate the quality of their work performance and their ability to bring people back into the system so that they become productive, tax-paying individuals.

Senator GRASSLEY. In your experience, have various tax laws been interpreted or applied differently by local agents in separate districts? In other words, is the application of the law up to the whims of local agents in some circumstances?

Mr. SMITH. It is not really up to the whims of the local agents. What it is, Mr. Grassley, is the interpretation or the intensity level of the individual in handling the case. Let me give you a quick example.

The automated collection system in Denver, Colorado. I pick up the phone, my client is there, and I talk to them. And I explain the circumstances, and fundamentally, they don't have the ability to pay. So, the individual starts asking: What is her rent? What is this? What is that? And they go through it, and they say they think they are going to have the ability to pay; so they will have to go and get it. I say thank you very much and I hang up.

And then, I mutter something to myself. And do you know what I do? I pick the phone right back up, and I dial 100-424-1040. I get another person. And I give them my name, and I go through the whole process. And they say to me: I am sorry, but they will have to go and get the money; or that is it. So, I hang up again.

Now, I am upset. But I have firm purpose, so I dial that number again, and I get that person; and I say: Here is the set of the facts. And I say the person can't pay, and that person says "Wow. Gee, I am really sorry about that. Well, what do you think you can pay?"

And I said, well, how about $50.00 a month? And they will say: "Well, that sounds okay to me."

So, what I want to underscore is——

Senator GRASSLEY. Is this kind of like form shopping?

Mr. SMITH. You have got it, guy. [Laughter.]

Now, let me explain. I just went over to Michigan. Now, please understand this; this is extremely important—extremely important, sir. I went to Michigan and I talked with a lady and a husband in my room, and they cried the whole time, how the Internal Revenue Service revenue officer told them that they had no rights. They seized their houses. They took their business. Don't try bankruptcy; it ain't going to work. And you know what? They believed him.

And they lost everything that they had. They owed the taxes, but there were other alternatives. But the revenue officer told them there were no other alternatives, and the guy believed him.

Now, I have another taxpayer over here in Michigan at the same time, on the other side; he is in business. He is pyramidding liabilities. He has been running up liabilities since 1985. He is not making his Federal tax deposits. And his CPA knows this revenue officer, and he said: Don't worry about it; we will work on it. In the same State of Michigan—and I hope the Senator from Michigan is listening—in the same State of Michigan, we have got one revenue officer who chews officer and we have another one sitting back saying: Well, okay. In other words, as I explained to you, Senator, the luck of the draw.

Senator GRASSLEY. What can be done to remedy the situation?

Mr. SMITH. I don't know. I think it is an extremely complex problem.

Senator GRASSLEY. Is there an answer?

Mr. SMITH. Yes.

Senator GRASSLEY. Can there be an answer found?

Mr. SMITH. Yes. I think it lies in the recognition that the Internal Revenue Service officer and all of the employees have a twofold responsibility—a twofold responsibility—to represent not only the Government's interest but the interest of the taxpayer. It is a twofold responsibility; and if that is taught to the Internal Revenue Service employees and they start recognizing that this is not an idea when you go out and bloody people to show as an example and a deterrent to noncompliance.

There is a recognition of the inherent rights of each individual to get the maximum benefit under the law. Our goal is not to destroy people. Our goal should be to recognize our responsibilities, to fairly, equitably administer the tax laws. It is not there right now.

And the reason why it is not here is not because the employees are bad people. I am proud of these people. They are my friends. But these people receive direction from on high as to how to carry out their jobs. It is management. It is the philosophy, the direction, the needs arising out of productivity goals, revenue enhancement objectives.

When Mr. Gibbs comes down and sits before this committee, and says: If you give me $265 million as a supplemental appropriation, I will give you $5.00 for every dollar you give me, then you have in effect established fiscal, statistical, economic objectives.

Senator PRYOR. He has asked for 8,000 new agents this year.

Mr. SMITH. All I can say is you had better pass this law damned fast. [Laughter].

I will tell you that right now. You know, this law is right, Senator. This is not a shackling thing. It is to protect the rights of middle America. Recognize that 95 percent is perfect. The system works, but it breaks down. If you are a pilot, you have emergency procedures. This bill provides emergency procedures for ordinary people that don't know where in the name of heaven to go.

And we are not telling the Internal Revenue Service they did bad, wrong, good, or indifferent. All we are telling the Internal Revenue Service is: Stop. Give us an opportunity to take a second look at the facts before you use these awesome enforcement authorities to destroy the financial well-being now and in the future of these people.

Senator GRASSLEY. Mr. Chairman, I am done asking questions of Mr. Smith. Because of time, I wonder if I could submit some questions to Ms. Mittleman for response in writing?

Ms. MITTLEMAN. Certainly.

Senator GRASSLEY. They are really very important questions, and I would like them to be more public than just the printed record; but I would not wish to take any more time of this panel.

Just in summary, Mr. Chairman and Senator Reid, based upon what Mr. Smith just said, there is a mindset within the bureaucracy that we are dealing with, and I don't think, Mr. Chairman, considering how you and I have cooperated on trying to bring about some Defense Department reform, I don't know whether this isn't a mindset we find within the Defense Department. There is an ethic that we have to overcome here, and legislation may help; but I am not so sure that we shouldn't have some sort of a weekend retreat between Senators like us, maybe people from the Ways and Means Committee, people from the IRS, and people from Treasury, to sit down and go over this and see if we can't work out in a gentlemanly manner some solution to this problem.

I think just passing legislation is a continuation of a confrontational environment and that maybe the environment itself is the problem. That is just off the top of my head that I am suggesting that. There may be a better approach, and there may be no approach. I don't know.

I just think that under your leadership, and I would be happy to work with you, maybe we ought to see if there isn't some other environment than just legislation to bring about a solution to some of the problems that Mr. Smith says are great because of the system, when 98 percent of the people are moral, upright, and ethical; and I don't disagree with that.

[The prepared questions of Senator Grassley and answers from Ms. Elaine J. Mittleman follow:]

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131 E. 4th Street
Davenport, IA 52801
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April 10, 1987

Elaine Mittleman
2040 Arch Drive
Falls Church, VA 22043

Dear Ms. Mittleman:

I respectively request that you respond to the following questions as a follow-up to the April 10, 1987 hearing on the "Omnibus Taxpayers' Bill of Rights".

1. You have detailed how the IG investigated you instead of the Chrysler reporting problem. To your knowledge, did the IG investigate the Chrysler problem at all, or was the investigation immediately directed at you?
   a. What was the outcome of the Chrysler investigation?

2. Before your ordeal, what was the general perception of the IRS IG? Did employees feel like they could go to the IG in order to get a problem cleared up?
   a. Do you think your case has had any effect on either the internal or external perception of the IG?

Please mark your return correspondence to the attention of the Chairman of the Senate Finance Committee, Senator Lloyd Bentsen, SD-219, Washington, D.C. 20510-6200.

Sincerely,

Chuck

Charles E. Grassley
United States Senator

CEG:kda

Committee Assignments:
APPROPRIATIONS
BUDGET
JUDICIARY
SPECIAL COMMITTEE ON AGING

ELAINE J. MITTLEMAN
ATTORNEY AT LAW
2040 ARCH DRIVE
FALLS CHURCH, VIRGINIA 22043
TELEPHONE (703) 734-0482

May 19, 1987

The Honorable Charles E. Grassley
c/o Chairman of the Senate Finance Committee
Senator Lloyd Bentsen
Senate Dirksen-219
Washington, D.C. 20510-6200

Dear Senator Grassley:

This is in response to the questions you submitted to me as a follow-up to the April 10, 1987, hearing on the "Omnibus Taxpayers' Bill of Rights."

1. I believe that the I.G. immediately investigated me and, particularly, the "incident" in which I was allegedly going through papers in the office of Assistant Secretary Roger Altman. I am enclosing some documents I just received as part of my litigation. These documents, particularly the Declaration of John L. Horn, effectively show the intricate document trail generated by my having gone to the Inspector General. Note that the letter dated March 27, 1981, from the counsel to the Inspector General explained that "(p)ortions of this report concern the circumstances surrounding the firing of Ms. Mittleman, and during the course of interviews of her supervisors, some of them expressed their candid opinions of Ms. Mittleman's work performance and personality." I should note that many of those interviewed were not my "supervisors." It is also interesting that the Inspector General report was completed on January 19, 1981. I was not fired until January 30, 1981, although I had been threatened with termination.

In addition, Mr. Horn's Declaration (at pp. 3-4) shows the summary of the fifteen exhibits to the I.G. report. It is clear that several of these interviews dealt solely with me, and not with a Chrysler investigation. For example, the interviews with the security guards and Ms. Krahulec concerned the "incident" in Roger Altman's office. There is no indication that the I.G. really intended the investigation to be an audit or fact-finding mission. I gave my interview when I first went to the Inspector General, and was never asked to clarify or explain the statements of the others, particularly about my being in Roger Altman's office. Some of these interviews

contained direct contradictions, but the I.G. made no attempt to ascertain or verify the truth, nor did the I.G. make independent findings of fact or conclusions. Also, it appears that the I.G. was focusing on me, rather than Chrysler. Note that Mr. Bolander testified about "his opinion about Ms. Mittleman's work performance, propriety of her actions, and her personality." Mr. Bolander was a co-worker, not a supervisor. I was not asked to give my opinion of his personality, work performance, etc. Others discussed my personality, as well.

It is quite impossible to determine from Mr. Horn's Declaration that any investigation was done of my allegations about Chrysler. (I believe that that part of the "investigation" consisted of saying "What do you think of Chrysler? - oh, it's OK," or something like that.) It strikes me as odd that the I.G. would investigate my personality, especially since I was the one who initiated the I.G. investigation. It can certainly be agreed that the I.G. is not a psychiatric office, qualified to analyze someone's personality. Furthermore, there almost is a tone of superciliousness in the Horn Declaration and other documents about the investigation of me.

There are also complications and a lot of confusion about the I.G. report and its dissemination, pursuant to the Freedom of Information Act and the Privacy Act. If you would like additional clarification about that, I will be glad to provide it.

a. It is difficult to indicate what was the outcome of the Chrysler investigation, because I don't believe there was one. The outcome was that the I.G. report was created to be used against me, as it was by the Office of the Special Counsel, and to cancel the message I was bringing by focusing on the messenger. See statements (enclosed) of Mr. Sugiyama of the Office of the Special Counsel as to how he relied upon the Inspector General report.

2. I was fairly new to Washington and had not heard of the Inspector General. When I was threatened with termination, I was calling many people, trying to figure out what to do. An attorney at Jones, Day, Reavis & Pogue, where I had been a law clerk, told me about the I.G. and said I should go there. He told me that my situation sounded exactly like the type of situation for which the Inspector General had been created. When I went to the Inspector General's office for the interview, they said to me repeatedly, "We don't do personnel matters. If you have a personnel matter, go to the Office of the Special Counsel." I did go to the Office of the Special Counsel, as well, but I insisted that I was there about waste, fraud and

abuse, not a personnel matter. Thus, I was quite shocked when I discovered that the I.G. investigation was basically about my personality and my being terminated. I do not remember ever discussing the I.G. with other employes, but I doubt anyone would have thought it was a good idea. There was a very big emphasis on secrecy, avoiding the press, limiting access to meetings and restricting answers to FOIA requests. There was litigation about the openness of the Chrysler Loan Guarantee Board meetings, pursuant to the Sunshine Act.

a. I do not know what the effect the I.G. investigation was on the perception of the I.G. My boss told me, while the I.G. investigation was ongoing (and before I was terminated) that I caused him a great deal of personal embarrassment by going to the I.G. I told him that, given the circumstances, I felt I had done the right thing. He replied, "I don't believe you." He was free to accuse me of stealing documents, or whatever, and, yet, he resented my causing him embarrassment by going to the I.G.

I recently spoke with John D. Donahue, an author of the highly-regarded New Deals, The Chrysler Revival and the American System. He told me he interviewed my boss for the book (probably in late 1983) and he had briefly discussed me. Mr. Donahue indicated that he did not then interview me, because my boss told him there were several investigations, and Mr. Donahue did not want to get involved in that. I can only surmise that my boss was using the I.G. investigation, done years earlier, as a threat for why others should not talk to me.

The day the I.G. report was mentioned in the press, a reporter for the Detroit Free Press called the Treasury to obtain a copy. The Treasury gave him my name, stating that it could not be released without my permission, because of the Privacy Act. However, other government agencies, including the Federal Reserve, the General Accounting Office and the Office of the Special Counsel, reviewed the report, certainly without my knowledge or permission. It seems to me that this selective use and distribution of the I.G. report would reinforce the opinion, both internally and externally, that the I.G. report can be used as a weapon, rather than as an auditing mechanism.

To sum, from my experience, the Treasury I.G. did not investigate the charges I brought. There was nothing from my

experience with the I.G. which would encourage me to go to the I.G. again. I very much appreciate your interest in effective government, and I will be glad to answer any additional questions.

Sincerely,

Elaine Mittleman

Enclosures

Name	Case Number	Page	Investigation Date	OPS Use
Mittleman	01448	17		

Locations of Personal Investigation	Locations of Record Sources

and Constitution Avenue, Northwest, Washington, D.C. (Telephone.)

Source was associated with Elaine Mittleman from approximately February, 1980 through May, 1980 when she resided in unit #302 at 6290 Edsall Road, Alexandria, Virginia. Subject's unit was located directly above the source's unit and they had casual contact as neighbors. They would see each other coming and going on nearly a daily basis and were friendly on a neighborly basis. Source notes that he attended one party in subject's unit. Although they would see each other coming and going on a frequent basis, source would only see the subject to talk to her about two or three times a month. Source does not know where subject was employed and is not sure whether or not she was employed anywhere. He has not had any contact with her since she moved out and does not know where she moved to. Source believes that subject had a female roommate for at least part of the time she was living there, but does not know the roommate nor exact dates.

Source described subject as a good neighbor who never caused any problems in the neighborhood. She appeared to be a pleasant and sociable person. Source never had any reason to complain about anything concerning subject.

Source believes subject to be an honest and trustworthy person. She always appeared to be emotionally stable and in good physical health. He never saw any evidence of involvement with law enforcement authorities nor did he have any reason to complain about noise or anything occurring whatsoever in that apartment. Source believes subject to be a person of good moral character and has no reason to question anything concerning her character, habits, or activities.

Subject is a loyal American citizen and is recommended for a sensitive position from the standpoint of the national interest.

Attempts to obtain additional coverage at this location were unsuccessful. Attempts to locate roommate were unsuccessful.

MISCELLANEOUS

UNITED STATES MERIT SYSTEMS PROTECTION BOARD, Office of the Special Counsel, 1120 Vermont Avenue, Northwest, Washington, D.C. Letter of Reply to Congressional Letter of Inquiry furnished by Shigeki J. Sugiyama, Associate General Counsel.

Letter of Reply to Congressional Inquiry concerning complaint filed by Elaine Mittleman contains the following information: Elaine Mittleman was a Schedule A Employee of the United States Department of the Treasury and complained to the Merit Systems Protection Board in December, 1980 that the changing of her duties, taking away of her office keys, and suggestions that she should look for a new job, were in reprisal for her criticizing the analysis of the Chrysler operating plans and asking hard questions of those plans. Subsequently, the agency

Name	Case Number	Page	Investigation Dates	OPM Use
Mittleman	01448	18		

Locations of Personal Investigation	Locations of Record Sources

terminated her and she claimed that the agency's actions were in reprisal for whistle blowing.

An on-site investigation and review of the Treasury Inspector General's Report of Investigation of the same matters disclosed insufficient evidence to support a charge of whistle blowing or any other prohibited personnel practice. The matter was closed in December, 1981.

Letter signed by Shigeki J. Sugiyama.

Letter contains no further pertinent information.

UNITED STATES MERIT SYSTEMS PROTECTION BOARD, Office of the Special Counsel, 1120 Vermont Avenue, Northwest, Washington, D.C. Informal notes of conduct of investigation furnished by Shigeki J. Sugiyama, Associate General Counsel.

Informal Notes indicate that in a telephonic conversation between Elaine Mittleman and Shigeki Sugiyama, Mittleman suggested that the Department of the Treasury was involved in prohibited personnel practices in attempting to terminate her employment. Sugiyama attempted to clarify her concerns and elicit from her exactly what prohibited personnel practice she thought was involved. Mittleman became abrasive and insisted that it was the responsibility of the Office of the Special Counsel to determine what prohibited personnel practice was involved.

Notes contain no further pertinent information.

SHIGEKI J. SUGIYAMA, Associate General Counsel, Office of the Special Counsel, United States Merit Systems Protection Board, 1120 Vermont Avenue, Northwest, Washington, D.C.

Source identified subject as Elaine Mittleman. Source's contact with subject has solely been in the context of her complaining that the Department of the Treasury was involved in a prohibited personnel practice in attempting to terminate her from her employment. Source's method of contacts with her were telephonic and limited in that nature. Source has absolutely no personal or social knowledge of Mittleman.

Mittleman first called to complain in December, 1980. Source spoke to Mittleman telephonically. Mittleman insisted that her impending termination from Treasury was a prohibited personnel practice and in reprisal for whistle blowing. When pressed to provide a specific instance or provide exactly what the nature of the prohibited personnel practice was, subject could not do so but instead became abrasive and personally cursed and abused source. When source attempted to obtain details of subject's complaint in order to properly investigate that complaint, she could not furnish specific details but only generalizations, stating that the Chrysler Motor Corporation failed to provide all reports required to the Department of the Treasury and thus was in violation of the law.

REPORT OF INVESTIGATION

Property of U.S. Office of Personnel Management

Mittleman	C1448	19		OPM Use

Locations of Personal Investigation | Locations of Record Sources

An investigation by the Office of the Special Counsel was initiated pursuant to that telephone call and several officials of the Department of the Treasury were interviewed. Management officials at the Department of the Treasury indicated that certain ongoing reporting requirements to Chrysler were unnecessary and therefore not required from Chrysler.

The investigation was complicated by three major factors: One was Mittleman's totally abrasive behavior which tended to substantiate Treasury Management Officials allegations that her behavior was erratic. This seemed to substantiate the reasonableness of the Treasury's Management attempts to deal with Mittleman. Two, the belief of some Treasury Managers that Mittleman had leaked sensitive matters to the press or through a United States Congressman. Three, there were no clear indications that Mittleman had engaged in any protected activities under the whistle blowing statutes.

Source had several telephone conversations with subject and noted that in every one her behavior was erratic and abrasive. When source would indicate that there were no findings against Treasury, she would become personally abusive and abrasive to him and source characterizes her tirades as bordering on hysterics.

Source continuously asked her what specifically she was alleging and specifically what part of the law was she alleging had been broken. Source notes that subject was an attorney and should have been able to pinpoint precise portions of statute. Source further notes that at the time Mittleman called she had not yet been terminated and there was no personnel action to complain about. Source further notes that subject was a Schedule A Employee, not entitled to the usual protections afforded career civil servants.

Source received and reviewed a Report of Investigation conducted by the Inspector General of the Department of the Treasury and also had Investigators from the Office of the Special Counsel interview witnesses at the Treasury Department. The results of these interviews were never written up nor was a formal report issued by the Office of the Special Counsel. Based on the report of investigation by the Inspector General, and interviews of Treasury Department officials, the source determined that there were no prohibited personnel practices involved in Mittleman's case and source issued a letter of decision. (See Exhibit C.)

Source notes that subject's behavior toward him seemed to be typical of her behavior as illustrated in the Inspector General's Report from the Department of the Treasury. It seemed to source that subject suffered from a lack of judgement and lack of rationality.

Source notes that he has no other independent knowledge of subject but, based on his conversations with subject and review of reports, he would not hire the subject to work in any sensitive position in the United States Government.

Source states that he can offer no further information.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELAINE MITTLEMAN, Plaintiff v. U.S. TREASURY, et al., Defendants	Civil Action No. 86-1852 Stanley S. Harris, Judge

DECLARATION OF JOHN L. HORN

I, JOHN L. HORN, hereby declare and state as follows:

1. I am Assistant Inspector General (Investigations) for the United States Department of the Treasury. I have held this position since January, 1986. In this position, I am responsible for the initial response to Freedom of Information Act (FOIA) and Privacy Act requests for access to, or amendment of, records maintained by the Office of the Assistant Inspector General for Investigations of the United States Department of the Treasury.

2. Based on review of the files maintained by the Office of the Assistant Inspector General for Investigations, it appears that Ms. Mittleman was provided, in accordance with Treasury regulations, with portions of the Report of Investigation concerning Ms. Mittleman's allegation of mismanagement of the Chrysler Loan Guarantee Program by the Office of Chrysler Finance.

3. By letter dated February 12, 1981, (Exhibit a, attached hereto) the Inspector General for the United States Department of the Treasury responded to Ms. Mittleman's January 29, 1981 request for copies of documents relating to her employment status, including the Report of Investigation concerning the Chrysler Loan Guarantee Program and "all other reports contained in my personnel file or reports which concern my status as a Treasury Department employe[sic]", under the Privacy Act and the FOIA. (Exhibit b, attached hereto.)

4. The January 19, 1981 Report of Investigation

concerning Ms. Mittleman's allegations, IG File No. 80-130, is part of a system of records, OS 00.190, "General Allegations and Investigative Records System", that was in 1981, and is now, exempted from various provisions of the Privacy Act, under 5 U.S.C. 552a (j)(2) and (k)(2), pursuant to regulations promulgated under the authority of the Secretary of the Treasury and published in the Federal Register. (Exhibit c, Privacy Act Systems, Department of the Treasury, Office of the Secretary (OS), OS 00.190, "General Allegations and Investigative Records - Treasury/OS", Privacy Act Issuances, 1981 Com. Vol. II, p. 666, attached hereto.) Routine dislosure of information contained in this system may be made, inter alia, to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation and to authorized investigative offices of the Treasury Department, constituent units, or other federal agencies to the extent provided by law and regulation, in connection with security procedures and as necessary to report apparent violations of law to appropriate law enforcement agencies. (Exhibit c.) "The Office of the Inspector General is authorized under Treasury Department Order No. 256 [reissued as 100-2] to initiate, organize, direct, and control investigations of any allegations of illegal acts, violations, and any other misconduct, concerning any official or employee of any Treasury Office or Bureau." 31 C.F.R. 1.36, "Office of the Inspector General", subsection (c). (Exhibit d, attached hereto.) The reasons for exemption of the system from various Privacy Act provisions under 5 U.S.C. 552a (j)(2) and (k)(2) are detailed in subsection (e) of 5 C.F.R. 1.36, "Office of the Inspector General". (Exhibit d.)

5. Consistent with Treasury's regulations, the February 12, 1981 response to Ms. Mittleman states that the system of records of the Inspector General is exempt under the access provision of the Privacy Act, and explains that Ms. Mittlemen's request was processed under the Freedom of Information Act to provide the greatest degree of access. The letter also explains that, to protect the privacy of persons interviewed by the Office of the Inspector General, portions of the report were not released to Ms. Mittleman, pursuant to section (b)(6) of the FOIA, which exempts "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy", and section (b)(7) of the FOIA, which exempts "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would...constitute an unwarranted invasion of personal privacy." The letter further explains that no determination was made concerning the applicability of other FOIA exemptions to Ms. Mittleman's request.

6. Neither the Office of the Inspector General nor the Disclosure Office for the Departmental Offices of the

Treasury now retains any record of the portions of the Report of Investigation provided to Ms. Mittleman in response to her January 29, 1981 request. In accordance with the Department's retention schedule for FOIA records, the 1981 records have been destroyed.

7.- It appears, based upon a comparison of the January 19, 1981 Report of Investigation, IG File 80-130, with plaintiff's Exhibit 2 to her "Opposition to Defendants' Motion to Dismiss or, In the Alternative, for Summary Judgment", that the following portions of the Report of Investigation were determined to be responsive to Ms. Mittleman's 1981 request and, thus, released to her under the FOIA:

a. Summary of Exhibits (17 pages) and List of Exhibits (1 page). The list of exhibits was provided; in addition, certain exhibits were provided, as detailed below:

b. Exhibit 1 (1 page) - Memorandum of interview with Chief of Treasury Security Force, U.S. Secret Service. This memorandum was not provided because it was determined not to be responsive to Ms. Mittleman's request for documents pertaining to her status as a Treasury employee.

c. Exhibit 2 (2 pages) - Memorandum of interview with officer, Treasury Security Force, U.S. Secret Service. This memorandum was not provided because it was determined not to be responsive to Ms. Mittleman's request for documents pertaining to her status as a Treasury employee.

d. Exhibit 3 (5 pages) - Memorandum of interview with Elaine Mittleman. This memorandum was provided in full to Ms. Mittleman.

e. Exhibit 4 (18 pages) - Handwritten pages from Elaine Mittleman. These pages were provided in full to Ms. Mittleman.

f. Exhibit 5 (12 pages) - Handwritten pages from Elaine Mittleman. These pages were provided in full to Ms. Mittleman.

g. Exhibit 6 (5 pages) - Memorandum to Secretary Altman. This memorandum was provided in full to Ms. Mittleman.

h. Exhibit 7 (3 pages) - Memorandum of interview with Bruce Bolander. This memorandum was withheld under exemptions (b)(6) and (b)(7)(C), to protect the privacy interest of the witness, who expressed

his opinion about Ms. Mittleman's work performance, propriety of her actions, and her personality.

i. Exhibit 8 (1 page) - Memorandum of interview of Janice Krahulec. This memorandum was withheld because it was determined not to be responsive to Ms. Mittleman's request for documents pertaining to her status as a Treasury employee.

j. Exhibit 9 (4 pages) - Memorandum of interview with Michael Driggs. This memorandum was witheld under exemptions (b)(6) and (b)(7)(C), to protect the privacy interests of the witness, who discussed personnel matters involving Ms. Mittleman and expressed his opinion about her work performance, propriety of her actions, and her personality.

k. Exhibit 10 (4 pages) - Memorandum of interview with Luke Lynch. This memorandum was provided to Ms. Mittleman; one sentence was redacted under exemptions (b)(6) and (b)(7)(C) to protect the privacy interests of the witness. The sentence reflects the witness's opinion concerning the Ms. Mittleman's work performance.

l. Exhibit 11 (19 pages) - Chrysler Corporation Loan Guarantee Board Report to Congress. This document was provided in full to Ms. Mittleman.

m. Exhibit 12 (2 pages) - Memorandum of interview with Roger Altman. This memorandum was provided to Ms. Mittleman; six sentences were redacted under exemptions (b)(6) and (b)(7)(C) to protect the privacy interests of the witness, who discussed personnel matters involving Ms. Mittleman and expressed his opinion concerning Mittleman's work performance, propriety of her actions, and her personality.

n. Exhibit 13 (1 page) - Memorandum of interview with Brian Freeman. This memorandum was provided to Ms. Mittleman; one sentence was redacted under exemptions (b)(6) and (b)(7)(C) to protect the privacy interest of the witness. This sentence reflects the witness's opinion of Ms. Mittleman's work performance and her personality.

o. Exhibit 14 (1 page) - Letter of resignation. This document was provided in full to Ms. Mittleman.

p. Exhibit 15 (1 page) - Letter of recommendation. This document was provided in full to Ms. Mittleman.

8. In July, 1983, the Office of the Assistant Inspector General (Investigations) was asked to respond to a subsequent request from Ms. Mittleman for the January 19, 1981 Report of Investigation, forwarded from the Office of Personnel Management (OPM). By letter dated August 29, 1983, Ms. Mittleman was informed that, because "appropriate portions of [the report] were released to [her] on February 18, 1981", no further action would be taken with respect to OPM's referral. (Exhibit e, attached hereto.)

9. In September, 1986, Ms. Mittleman again requested a copy of the January 19, 1981 Report of Investigation. By letter dated October 9, 1986, Ms. Mittleman was informed that the Department had responded to her request for the report of investigation on February 12, 1981, and that her request for the same information would not be processed again. By letter dated November 3, 1986, in response to her request for clarification, Ms. Mittleman was provided with a copy of the February 12, 1981 response. (Exhibit f, attached hereto.)

10. Because it was explained, in a telephone call to Treasury, that Ms. Mittleman was unable to locate the documents provided in response to her 1981 request, she was provided a copy of a redacted copy of the January 19, 1981 Report of Investigation contained in the files of the Office of the Inspector General (Investigations), Exhibit 3 to plaintiff's "Opposition to Defendants' Motion To Dismiss or, In the Alternative, For Summary Judgment".

11. It now appears from a memorandum dated March 27, 1981, located in the files of former counsel to the Inspector General, that this redacted copy of the January 19, 1981 Report of Investigation was not what was provided to Ms. Mittleman in response to her January 29, 1981 request. (Exhibit g, attached hereto.) The redacted copy, instead, appears to have been provided to a third party in response to a March 6, 1981 FOIA request for a copy of the Report of Investigation. Portions of the Report of Investigation were redacted in the response to this third party request not only to protect the privacy interests of witnesses who expressed their opinions about Ms. Mittleman, but also to protect Ms. Mittleman's privacy interests in those opinions and in the circumstances surrounding the termination of her employment with the Department of the Treasury. For these reasons, all references to statements of opinion about Ms. Mittleman and to personnel matters involving Ms. Mittleman, including her termination, were redacted from the copy of the Report of Investigation that was originally provided to the third party and that was later provided to Ms. Mittleman.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge and belief.

May 8, 1987
Date

John L. Horn
John L. Horn
Assistant Inspector General
(Investigations)
Department of the Treasury

Dear Ms. Mittleman:

This in in response to your request dated January 29, 1981, which asked for documents relating to your employment status and which specifically identified a report of investigation prepared by the Inspector General. This office is responding solely to the request for disclosure of the report of investigation under the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Privacy Act of 1974, 5 U.S.C. §552a. We have determined to release the report in a sanitized form for the reasons that appear below:

The systems of records of the Inspector General are exempt from the access provisions of the Privacy Act, under Section k(2), in that they contain "investigatory material compiled for law enforcement purposes."

However, under the FOIA, we are releasing substantial portions of the report of investigation, although we are withholding portions of certain documents. The report requested contains statements made in a variety of contexts by persons interviewed by this Office. In our judgment, the disclosure of some of these statements would violate the privacy of those individuals.

Section (b)(7)(C) of the FOIA exempts from disclosure:

> investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would ... constitute an unwarranted invasion of personal privacy.

In addition, Section (b)(6) of the FOIA exempts from disclosure:

> "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

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Exhibit a

Other portions of the investigation may be exempt under additional FOIA exemptions. However, we have made no determination as to the applicability of those exemptions here, and have, instead, chosen in our discretion to release these documents.

You may appeal this decision within 35 days of the date of this letter. Your appeal must be in writing and signed by you and should be addressed to:

Freedom of Information Appeal, O.S.
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The deciding official on your appeal will be the Deputy Secretary.

Sincerely,

(Signed) Leon C. Wigrizer

Leon C. Wigrizer

Ms. Elaine Mittleman
2040 Arch Drive
Falls Church, Virginia 22043

(a) *In general.* The Office of the Inspector General, Department of the Treasury exempts the system of records entitled, "General Allegations and Investigative Records" from certain provisions of the Privacy Act of 1974. The purpose of the exemption is to maintain confidentiality of data obtained from various sources that may ultimately accomplish a statutory or executively ordered purpose.

(b) *Authority:* The authority to issue exemptions is vested in the Office of the Inspector General, as a constituent unit of the Treasury Department by 31 CFR 1.20.

(c) *Exemptions under 5 U.S.C. 552a(j)(2):* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Office of the Inspector General is authorized under Treasury Department Order No. 256 to initiate, organize, direct, and control investigations of any allegations of illegal acts, violations, and any other misconduct, concerning any official or employee of any Treasury Office or Bureau.

(2) To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply to the above named system of records, then the exemption under 5 U.S.C. 552a(k)(2) relating to investigatory material compiled for law enforcement purposes is claimed for this system.

(3) The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows:

5 U.S.C. 552a(c)(3) and (4)
5 U.S.C. 552a(d)(1), (2), (3), (4)
5 U.S.C. 552a(e)(1)(2) and (3)
5 U.S.C. 552a(e)(4)(G), (H), and (I)
5 U.S.C. 552a(e)(5) and (8)
5 U.S.C. 552a(f)
5 U.S.C. 552a(g)

(d) *Exemptions under 5 U.S.C. 552a(k)(2):* (1) Under 5 U.S.C. 552a(k)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes.

(2) To the extent that information contained in the above named system has as its principal purpose the enforcement of criminal laws, the exemption for such information under 5 U.S.C. 552a(j)(2) is claimed.

(3) Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(2) are as follows:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)(1), (2), (3), and (4)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4)(G), (H), and (I)
5 U.S.C. 552a(f)

(e) *Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2):* (1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(c)(4), (d)(1), (2), (3), and (4), (e)(4)(G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contest of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. This system is exempt from the foregoing provi-

sions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; co-defendants of a right to a fair trial; constitute an unwarranted invasion of the personal privacy of others, disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

(A) Because it is not possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

(C) In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

(D) In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privilege under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

(B) Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his activities.

(C) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(D) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

(A) the authority under which the information is sought and whether dis-

closure of the information is mandatory or voluntary.

(B) the purposes for which the information is intended to be used,

(C) the routine uses which may be made of the information, and

(D) the effects on the subject, if any of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (B) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities by requiring disclosure of undercover agents identity and impairing their safety, as well as impairing the successful conclusion of the investigation.

(iii) Individuals may be contacted during preliminary information gathering in investigations authorized by Treasury Department Order No. 256 before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Since the law defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The notice requirement of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(f) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which also is included in another system of records retains the same exempt status as in the system for which an exemption is claimed.

DIRECTOR OF PRACTICE

Notice of rules exempting certain systems from requirements of the Privacy Act

(a) *In general.* The General Counsel of the Treasury hereby issues rules exempting certain systems of records of the Office of Director of Practice from the provisions of (c)(3), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H) and (f)(1), (2), (3), (4) and (5) of 5 U.S.C. 552a. The systems of records for which exemptions from the above provisions are claimed are the following:

(1) Treasury—OS—Applicant Appeal Files

(2) Treasury—OS—Closed Files Containing Derogatory Information about Individuals' Practice before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice

(3) Treasury—OS—Derogatory Information (No Action)

(4) Treasury—OS—Disbarments

(5) Treasury—OS—Inventory

(6) Treasury—OS—Resigned Enrolled Agents, and

(7) Treasury—OS—Present Suspensions from Practice before the Internal Revenue Service

The purpose of the proposed exemptions is to maintain the confidentiality

DISCLOSURE
STAFF

JAN 29 4 10 PM '81

DEPARTMENT
OF THE TREASURY
ADMINISTRATIVE
PROGRAMS

January 29, 1981

To: Mr. John Schmidt, Acting Assistant Secretary
From: Ms. Elaine Mittleman
Subject: Documents Relating to My Employment Status

As the individual primarily concerned, I hereby request a copy of the report prepared by the Inspector General's office and submitted to you. This report was prepared as a result of my disclosure to Mr. Leon Wigrizer on December 12, 1980, that Chrysler had failed to submit certain documents. I also hereby request all other reports contained in my personnel file or reports which concern my status as a Treasury Department employe. I invoke the rights afforded me pursuant to the Freedom of Information Act and the Privacy Act, but understand that my rights are not limited to those granted pursuant to those Acts.

In the event that I am required to take judicial action, I will claim that denying this request on an expedited basis, given the proposed termination on January 30, 1981, of my employment, constitutes part of the effort to terminate me and to keep my impending termination a secret. I refer to a memo written on January 28, 1981 to Mr. Tony Conques in which I stated that the first I was made aware of my impending termination was on January 27, 1981, when I called him concerning a detail to the Environmental Protection Agency. I have received no written notice of my impending termination.

Sincerely,

Elaine Mittleman

cc: Messrs. Roger Mehle
Leon Wigrizer
Luke Lynch

Exhibit B

AUG 29 1983

Dear Ms. Mittleman:

We have been asked by OPM to respond to you with respect to the release to you under the Freedom of Information Act of a document in their files which originated in this office. The document, a report of investigation of allegations made by you to this office in December 1980, was provided to OPM on or about February 18, 1983, after you authorized its release to them.

Our records indicate that you previously made a Freedom of Information Act request for this report, that it was reviewed, and that the appropriate portions of it were released to you on February 18, 1981.

Accordingly, we plan no further action with respect to OPM's referral.

Sincerely,

/S/

Paul K. Trause

Ms. Elaine Mittleman
2040 Arch Drive
Falls Church, Virginia 22043

I-505:GENERAL COUNSEL:BOverton:alp:8/25/83:A52

OVERTON LONKAY

BO 8/25/83 MK 8/26/83

Exhibit e

DEPARTMENT OF THE TREASURY
WASHINGTON

November 3, 1986

Dear Ms. Mittleman:

This is in response to your letter of October 17, 1986, asking for clarification of our response of October 9, 1986, to your request for a copy of the Inspector General's report concerning the Chrysler Loan Guarantee Program. In our October 9, 1986 response, we referenced the response to your original request for a copy of the Inspector General's report. That earlier response, by letter dated February 12, 1981, stated the Privacy Act and Freedom of Information Act exemptions on which we relied in denying access, but also explained that a redacted copy of the report was provided to you at the Inspector General's discretion to do so.

Accordingly, we have enclosed a copy of the response of February 12, 1981, and it is unnecessary to restate the applicable exemptions.

Sincerely,

John L. Horn

John L. Horn
Assistant Inspector General
(Investigations)

Enclosure

Ms. Elaine Mittleman
2040 Arch Drive
Falls Church, Virginia 22043

Exhibit f

MAR 27 1981

Eugene H. Essner
Acting Inspector General

Lenore D. Mintz (LDM) LSM
Counsel to the Inspector General

FOIA Request from [redacted]

This is in reference to a letter dated March 6, 1981, from Mr. [redacted] to Secretary Regan requesting, under the Freedom of Information Act, a copy of the Report of Investigation concerning Elaine Mittleman which was discussed in a New York Times article on March 6, 1981.

At your request, we have drafted a response to Mr. [redacted] for your signature. We have also sanitized portions of the report, in accordance with the exemptions provided for under the FOIA, so as to protect the privacy interests of the persons involved.

Portions of this report concern the circumstances surrounding the firing of Ms. Mittleman, and during the course of interviews of her supervisors, some of them expressed their candid opinions of Ms. Mittleman's work performance and personality. We believe these witnesses have a privacy interest in having those opinions protected. We also believe that Ms. Mittleman has a privacy interest in having the opinions expressed about her protected from release under the FOIA, and a further interest in having the investigation of the circumstances surrounding her termination protected.

Therefore, we are suggesting that you release the report in the attached sanitized form.

In making this recommendation to you, we are not suggesting that this is the only position for you to consider. Your office has the discretion to release documents under the FOIA even if there is a provision under the Act which would allow you to withhold these documents. In making this decision, we believe there is a balancing test which you would want to make between the privacy interests of the persons involved, and the public interest in release. In

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Exhibit g

cading the New York Times article referred to by Ms. , it would appear that it was Ms. Mittleman who discussed her firing with the Times reporter, and who gave the reporter the copy of the report of investigation which your office released to her under the FOIA. In so doing, it could be argued that Ms. Mittleman, by her own actions, made the matter of her termination a public issue, and in so doing waived any privacy right which she might otherwise claim.

For these reasons, we believe that your office could, in its discretion, either withhold or release this report, and there would be support in the law for either position.

While at the present time we believe the privacy interests of Ms. Mittleman may prevail, circumstances may change and we might reach a different conclusion in the future. If you choose to withhold the documents in question at this time, you are not barred from releasing them to another requester under the FOIA at a later date, should you determine that circumstances have changed in such a way that the public interest in seeing the documents outweighs any privacy interests in having them withheld.

If you prefer not to release the report in the form proposed, or if you would like to discuss this matter further, I am available to meet with you at your convenience.

Attachments

Mr. SMITH. Mr. Grassley and Mr. Chairman, I would ask you if I could be allowed to make one more observation, please?

Senator PRYOR. Certainly.

Mr. SMITH. I want to tell you about a client who owes $12,000 to the Internal Revenue Service. The IRS has been on her case to pay. I met with the revenue officer. I told her that she can't pay because she was going through extremely emotional times and doesn't know when she will work. Her husband beats her up. She threw him out. The family environment is not good. The son, who is nine years old, tried to kill himself three times. The son is going to a psychiatrist. While I was explaining this to the revenue officer, she put her hand up and said to me:

> Stop, Mr. Smith. I have told you many times before I don't want to hear it. I don't care about her personal situation. All that matters is what is shown on this financial statement. That other stuff doesn't matter.

You know and I know, as well as anyone else in this room knows, that it does matter. When a child tries to kill himself three times, when a husband beats up his wife, you had better damned well believe it matters. But here is the critical point. The revenue officer is a very good person and a good mother. She was a friend when I was in the IRS.

The point is that those facts meant nothing to her because management in the IRS told her that it meant nothing. She is not an insensitive human being, this revenue officer. She is a decent, loving, kind person involved in her community.

But when I told her these personal things—that the son tried to kill himself three times, the husband beats her up, she is overwhelmingly involved in emotional things that totally incapicitate her and cause her to be unable to earn money—she tells me: Stop, Mr. Smith. It doesn't mean anything. So, the bottom line is that you have got an undercurrent within the Internal Revenue Service where their value systems are screwed up.

And as a result of that, that is what causes the people to act like they do, because they don't think that they are wrong, when in fact they are wrong, sometimes procedurally but most assuredly, in my judgment, they are morally wrong.

Senator REID. Mr. Chairman?

Senator PRYOR. Go right ahead, Senator.

Senator REID. I know that our time is quickly expiring, but I would like to compliment you again. And of course, in complimenting you I must compliment the staff for the great job they have done in sorting through the scores and scores of witnesses that they had who could come and testify. I think the mix that they got today was excellent for us. The staff should be complimented. I look forward to hearing the next panel and, of course, Senator Armstrong. I have some other questions of these three witnesses that I will submit in writing, if that will be all right with you, Mr. Chairman.

Senator PRYOR. I want to call on Senator Armstrong, but first I would like to ask one or two questions of Mr. Treadway.

Bill, do you have time for me to ask a few questions?

Senator ARMSTRONG. Yes, sir. Go right ahead.

Senator PRYOR. Let me say, Senator Armstrong, we welcome you to this hearing. I know you are managing some legislation and have to be on the Senate floor momentarily and have been there already this morning; but we have heard an outstanding group of witnesses, witnesses that have stated problems that relate to specific areas of the Taxpayers' Bill of Rights that we are all co-sponsoring.

This has been a great panel, and I know that you will want to read their testimony.

Mr. Treadway, during the process of the five or six-year ordeal that you went through with the IRS, did you attempt to discover or did anyone lead you in any way to an Ombudsman Program or the Problem Resolution Program? Did anyone advise you to go there? And if you did, did you get any support or help?

Mr. TREADWAY. None whatsoever.

Senator PRYOR. For example, the IRS never did advise you of this particular service?

Mr. TREADWAY. No, they did not.

Senator PRYOR. Did they ever advise you of your particular rights? In other words, was there some form of, in simple terms, a "Miranda" rights that you had told or read to you during any stage of the process?

Mr. TREADWAY. None whatsoever.

Senator PRYOR. If you would describe the first meeting that you had with the Internal Revenue Service when you sensed that there may be a problem and that they may attempt to seize your property or that of your friend?

Mr. TREADWAY. My first meeting was on August 3, 1982.

Senator PRYOR. 1982?

Mr. TREADWAY. Yes.

Senator PRYOR. Now, at that meeting, did you find, let's say, cordiality on the part of the agents?

Mr. TREADWAY. None whatsoever. They just left me a great big packet of papers, and they said: You have a lot of reading to do.

Senator PRYOR. And what type of reading was that?

Mr. TREADWAY. To this day, Senator, I couldn't understand it. All it said was "unagreed, unagreed, unagreed." In fact, I never had a chance to agree to anything.

Senator PRYOR. At any stage, did they advise you to have counsel or an accountant with you for any of the meetings?

Mr. TREADWAY. That was the only meeting. That was the first time I personally met with any IRS agents. I always had an accountant. He always had power of attorney.

Senator PRYOR. After assets, I believe, of $22,000 of Shirley's were levied upon, and the court decided that this was an unreasonable levy and threw it out and found her innocent, or not a guilty party in the matter of speaking, how long did it take the IRS to pay her back this $22,000?

Mr. TREADWAY. This happened on August 2, 1982. Abatement was September 23, 1982; and it took them until January 23, 1982. They buried it in the system on purpose.

Senator PRYOR. It took them until 1983 then?

Mr. TREADWAY. Yes. I am sorry. January 1983.

Senator PRYOR. So, they buried this within the system on purpose?

Mr. TREADWAY. On purpose. May I just say one thing, Senator. On August 3, 1982, to quote Jessup's worksheets, he said: Now, that Shirley has sought legal counsel, that gives IRS the right to take her house. What he meant was—he already had her house—what he meant, and we knew what he meant, was he was coming to take the furniture.

Now, since when doesn't somebody have the right to seek legal counsel? Shirley had never had legal counsel; she was on my shirttail.

Senator PRYOR. Senator Armstrong?

STATEMENT OF THE HONORABLE WILLIAM L. ARMSTRONG, U.S. SENATOR FROM THE STATE OF COLORADO

Senator ARMSTRONG. Mr. Chairman, thank you very much for an opportunity to say a few words. I apologize for my late arrival and early departure; but as you pointed out, I am involved in a matter that is coming before the Senate, and the leaders are eager to dispose of it and to get on to some other things.

But I didn't want to let this hearing pass without dropping in, first, to congratulate you for your interest in this matter; and second, to indicate my own support of the legislation which you have introduced and of the work which you are the staff are doing to bring this matter to light.

Mr. Chairman, those in the room of a certain age will recall a radio program called "Mr. District Attorney." Do you remember that?

Senator PRYOR. I am too young to remember that. When was that, Senator Armstrong? No, I must say, I don't. [Laughter.]

Senator ARMSTRONG. I don't remember exactly when that was on the air, but I must have heard it a great many times because 35 or 40 years later, I can easily recall how that program began, and it was a weekly radio drama which was popular, I guess, back in the 1940s and 1950s, which began each episode with the ringing declaration of the chief character in the broadcast, the District Attorney, who said as he began each broadcast: "It shall be my duty not only to prosecute to the full extent of the law, but to protect with equal vigor the rights and privileges of all citizens."

Now, I am not here at all to suggest that we ought to draw our legal scholarship from old radio broadcasts, but that does express pretty well what most of us think the ideal of law enforcement ought to be and what the relationship ought to be between the officers of Government, including the IRS and the Justice Department, and the citizens who are served. In fact, there is an old principle, I think—which I couldn't tell you the source of it, but it is engrained in my recollection—that in this country, we think it would be better for 10 wrongdoers to go free than for one innocent person to be convicted.

And it is just my own opinion, not based upon just a snap judgment, but in fact based upon a very careful study of the reading of numerous court opinions, entertaining of about three days of witnesses before this committee at hearings chaired by Senator Grass-

ley last year at which I was present for every single minute of the three days as distinguished judges, trial attorneys, representatives of the trial attorneys national association, the American Bar Association, and others, as well as witnesses from the IRS and Justice Department, I am convinced that something is seriously haywire, both at the IRS and at the Justice Department.

Now, Mr. Chairman, I don't think for a minute that everybody who works at the IRS has gone off the rails, nor do I think that of the people at the Justice Department. There are a lot of people who work for these two agencies and elsewhere in Government who remain just as committed as we are to the concept that the citizens of this country deserve to be protected in their rights and not to be harassed or threatened or bullied or kicked around or anything of the kind; but it is very, very clear—very, very clear—from the record that there are many instances in which the IRS and the Justice Department are guilty not only of abusive conduct but indeed of unethical conduct in a number of cases which have been documented before this committee, conduct which is illegal.

Mr. Chairman, I make this point just to emphasize that we ought to do something. The people of this country deserve to be protected. I also want to draw attention to the fact that, parallel with the effort in this committee, there is the work of the Judiciary Committee. You will remember both our colleague from Nevada and you and I and Senator Grassley and others who have been interested in this supported a resolution in October on the last night of the session by which the Senate approved a resolution empowering and calling upon the Senate Judiciary Committee to hold hearings on the practice of the Justice Department.

I became convinced that was necessary precisely because, after listening to the response of the Department of Justice and the IRS before this committee to the allegations that had been raised, I became convinced they were stonewalling. There wasn't any other way to put it. They were not responsive; they were not forthcoming.

They came up here with what seemed to me to be the clear intent and purpose of preventing this committee from knowing what was going on. And it became obvious to me that, to get to the bottom of that, we are going to need some investigators; we are going to need some staff. We are probably going to have to subpoena some people.

We may have to drag people kicking and screaming before appropriate committees of the Congress, but by gosh, I am determined we ought to do it. Now, they can change my mind on that any time by beginning to cooperate.

Any time the IRS and the Justice Department want to answer some very simple questions in a satisfactory way, they can get me off their case in a minute because I didn't come to the Senate to play cops and robbers. This isn't something that I want to get into; but I think it is the duty of Congress to know, first of all, what has happened to the people who have been found in several court cases who have violated the law? Are these people still employed by the Justice Department?

Have they been reprimanded? Have they been disciplined? What management procedures have been put into effect to prevent a rep-

etition of this abusive conduct and to protect the rights of citizens? Asking those questions of the Justice Department last year was like whistling into a hurricane.

So, I hope that the Judiciary Committee will take that part of the task to heart. And I am grateful to you, Mr. Chairman, and to our colleague from Nevada for joining me in reminding the chairman and ranking member of the committee of our interest in that.

Second, I certainly think a system to compensate citizens for financial damage done as a result of illegal or inappropriate Government action is in order. I don't know the exact format of that yet, but it is clear to me that if you improperly—even with malicious intent—run a taxpayer through a wringer and cause him to spend $100,000 or $200,000 or $500,000 or a million dollars in their defense, and then it turns out it was all a false alarm or even that the agents involved engaged in illegal activity, then in that case they ought to be entitled to some sort of financial compensation.

One witness before this committee last year testified that it had cost him $6 million to clear his name, and he did clear his name. The court in that particular case wrote an opinion which excoriated the Government, and the response of the Government—the response of the Justice Department—was not to apologize. It was not to discpline the people involved. They moved, for heaven sakes, to suppress the publication of the opinion.

So, I think you are on the right track. Though I cannot stay longer this morning, Mr. Chairman, I just want you to know that I am in your corner and I am behind you, and I wish you well. And I want to actively participate in the formulation of this legislation.

I do have a prepared statement which I would like to submit for the record.

Senator PRYOR. The statement will be at the appropriate place in the record. We thank you, Senator Armstrong, and once again, I want to say how sorry I am you could not hear this very powerful testimony.

Senator ARMSTRONG. I assure you I will review the testimony that has been presented.

Mr. SMITH. The public thanks you also, Senator Armstrong, for supporting this bill.

Senator PRYOR. Mr. Smith, as we would say down in Arkansas, people like you are as strong as train smoke. [Laughter.]

You did a good job, Ms. Mittleman and Mr. Treadway. We will leave this record open for further questions to the witnesses, should you desire, Senator Armstrong.

Ms. MITTLEMAN. Mr. Chairman, I would like to clarify one thing. When you asked me if I was a whistleblower, under the various laws there are different definitions on what a whistleblower is, and I am sure you know. I would qualify as a whistleblower. The reason I am bringing it up is that the Office of Special Counsel, and that was another aspect of their "cop-out" if you will.

Senator PRYOR. I appreciate that.

Ms. MITTLEMAN. There are various ways to define a whistleblower, and I basically qualify under all possible ways.

Senator PRYOR. Thank you. We thank all the members of this panel. Mr. Treadway?

Mr. TREADWAY. Senator Pryor, I can relate to everything that Mr. Smith has said. I have been there. Okay? All I want to see is a fair and just system for all Americans.

Mr. SMITH. Right on.

Mr. TREADWAY. I don't want to see this happen to anybody else. And everybody else has told their stories; may I just recite a couple little stories? A radio station taped Shirley's story one day. The radio announcer spent an hour and a half with her; and when she was done, he looked at her and he said: You know, I am totally drained. For one hour and a half, he was totally drained; and we have lived with it for five years.

During a break in Jessup's depositions, when we got our hands on his worksheets, we took a break and we went in the men's room because I am sure the room we were in was bugged; and my attorney said to me: 'Tom, lightning didn't hit you; a meteor did.' Now, there are percentages of lightning hitting people and meteors. And may I state a meteor in the United States only ever hit a person once; it came through a house and hit a woman. So, that is what happened to us—a meteor hit us.

Senator PRYOR. Mr. Treadway, you are very courageous for coming before this committee.

Mr. TREADWAY. I hope it helps.

Mr. SMITH. Mr. Chairman, I would like to offer to you and your staff and to any other Senator my services—or to any Congressman—who needs help in the technical and professional areas.

Senator PRYOR. Everyone on this panel may need your assistance.

Mr. SMITH. Well, that is all right, sir; my fees are very low. [Laughter.]

I want to underscore that I think so much of this bill that I will offer my services free of charge to do whatever I can to get this bill passed because I think it is a right bill. It is a good bill for middle class America. This didn't come as a result of a lobby, sir. This came out of the grass roots of America. It came from a need, a need from middle America.

Senator PRYOR. Thank you. We are grateful. Our next panel will come forward, please. This is our last panel.

First we have Mr. Jack Wade. He is the author of "The Power to Tax"; he is from Oakton, Virginia. We have Mr. James McCarthy, Esquire, Chairman of the Small Business Committee of the United States Chamber of Commerce. We have Mr. George M. Parker, member of the National Society of Public Accountants, Alexandria, Virginia.

Mr. Wade, I have some background information about you and about your very distinguished career; and very honestly, I can't put my hands on it. Why don't you tell us for a moment about yourself, and then go into your statement?

[The prepared written statement of Senator Armstrong follows:]

STATEMENT OF SENATOR WILLIAM L. ARMSTRONG

Mr. Chairman;

I welcome this opportunity to appear before this subcommittee to assist you in focusing the attention of this Congress on the very important matter of improving the rights and standing of taxpayers when they are dealing with the Internal Revenue Service and the Department of Justice in tax disputes.

My guess is that nearly all Senators have encountered constituents complaining about the Internal Revenue Service. What I hear over and over again is that the are instances where some at the IRS have developed a single-mindedness that defies equity and reason. When this happens taxpayers become disadvantaged by the laws and procedures now in place which introduce a bias, in my opinion, against the taxpayer and in favor of the federal government. Justice is available for taxpayers who have the financial resources necessary to challenge the IRS. Even in these cases when justice is dispensed it is often too late, the damage to reputations; to the business; and to one's financial resources having already been done. The question I am left with is this: Is justice available for the vast majority of taxpayers who have a dispute with their government or do they remain vulnerable to manipulation?

The legislation before us, S-604, takes many of the administrative steps necessary to make the tax dispute resolution process between the individual and the government more evenly matched and subject to review. I applaud your initiative, Senator Fryor, and as a co-sponsor of this measure I will join you in working for its early enactment.

There are three very important additional matters that I would like to address. If we are going to be successful in this endeavor we must take the following actions. These solutions surfaced as a result of hearings held by this IRS Oversight Subcommittee on June 19, 20 and 23, 1986 where the emphasis was placed on the accountability and liability of the government for the activities of its employees.

JUDICIARY COMMITTEE HEARINGS ON IMPROPER INVESTIGATIVE AND PROSECUTORIAL PRACTICES. On October 17, 1986 the Senate approved a resolution empowering the Senate Judiciary Committee to hold hearings on procedures for protecting citizens against improper investigative and prosecutorial practices of the IRS and Department of Justice. The Judiciary Committee should have some role due to jurisdictional complications and the highly legalistic nature of the matter. To date this has gone unfunded and citizens go unprotected. The letter you and I and others have sent to Chairman Biden of the Judiciary Committee and Chairman Ford of the Committee on Rules and Administration will assist in bringing this to a positive conclusion.

A SYSTEM TO COMPENSATE CITIZENS FOR FINANCIAL DAMAGE DONE AS A RESULT OF ILLEGAL OR INAPPROPRIATE ACTIONS BY THE FEDERAL GOVERNMENT OR ITS EMPLOYEES. In many instances actions are taken by the agencies of the U.S. Government or its employees to put someone "out-of-business." It is now often immaterial whether justice is served at some future date when a business or individual has been destroyed financially at the time of the original action. Financial compensation should be provided to victims of the tax dispute resolution process in appropriate circumstances.

A SYSTEM TO ASSESS THE LIABILITY OF THE FEDERAL GOVERNMENT AND PERSONAL LIABILITY OF ITS AGENTS OR EMPLOYEES. Enforcement tools provided to the IRS and other government agencies should be exercised in an appropriate fashion and actions taken with regard to taxpayers should be within the law. If the tools are needed by government agencies and their personnel, they should be exercised legally. Unethical or illegal conduct by employees of the U.S. Government can be limited by establishing some level of personal liability if powers granted to accomplish a job are used irresponsibly. Without such liability some employees of the U.S. Government can act with relative impunity.

The Congress spent much of the last year addressing "tax reform" issues that included regrettably few taxpayer protections. More emphasis was applied in that legislation to increasing penalties and creating a bias to settle disputes with the IRS without a determination of wrong-doing. We must do more to "reform" and preserve taxpayer rights and I hope we will see less stonewalling on the part of the government this year.

JUDICIARY COMMITTEE HEARINGS NEEDED

Last October, the Senate adopted a bipartisan resolution (S. Res. 514) I introduced that calls upon the Senate Judiciary Committee to hold hearings on the procedures necessary for protecting citizens against improper investigative and prosecutorial practices of the IRS and Department of Justice. The hearings are expected to need designated funding in order to enable the committee to hire the additional individuals with the knowledge and skill necessary to craft legal safeguards in this highly technical area. The Senate Judiciary Committee is to report back to the full Senate on its findings and recommendations on or before September 1, 1987.

The basis of my concern in this subject stems not from unsubstantiated complaints from taxpayers, but from cases where federal courts actually dismissed cases because of investigative and prosecutorial abuses by government agencies. Some of these cases were subjects of Congressional hearings in the 99th Congress.

In one case, United States v. Kilpatrick, 575 F. Supp 325 (D. Colorado 1983), the Federal District Court Judge wrote a comprehensive opinion that was extremely critical of Department of Justice attorneys and IRS agents. This decision, alone, was enough to raise serious concern over the conduct of the Government in this case. But to make matters worse the Justice Department attempted to prevent the publication of the judge's decision that exposed the improprieties involved. I publicly protested this move by the Department to

censor the decision by placing the decision in the Congressional Record on January 27, 1984.

The case raises questions about the practice of bringing criminal charges against individuals instead of civil claims for activities that are not clearly illegal. This case also demonstrated apparent abuses of the grand jury system.

In a second case, United States v. Pami International Corporation, Criminal No. B-84-00101 (D. Maryland, May 15, 1984), the issue is the alteration of documents by an assistant United States attorney and two IRS agents. The Court concluded with a finding that: "The Government's conduct was patently egregious and cannot be tolerated or condoned. The manner of proceeding shocks the Court's conscience." The indictment was dismissed.

As it happens the very same assistant United States attorney was involved in another episode of evidence tampering 5 years earlier and yet he is retained in the Department of Justice and given the opportunity to strike again.

Mr. Chairman, if these taxpayers did not challenge the Government's actions in court we would not know about these abuses. How many more instances of this type have occurred and have gone unchallenged by those less willing or able to do so? These hearings today will begin to answer that question and you are to be congratulated for your vigilance.

SYSTEM TO COMPENSATE CITIZENS FOR DAMAGE DONE AS A RESULT OF ILLEGAL OR INAPPROPRIATE ACTIONS BY THE FEDERAL GOVERNMENT.

These cases reflect that justice comes long after the taxpayer has suffered the economic consequences. This often means being driven out of business. Justice seems to provide little in these cases except vindication.

The Tax Reform Act of 1986 did make permanent a provision that permits the recovery of attorney's fee's in tax cases where the taxpayer proves the Government's action was not substantially justified. Those of us supporting that change in law had also sought to shift the burden of proof to Government to prove its position was substantially justified in order that the bias be shifted in favor of the taxpayer.

The recovery of attorney's fees can be helpful and a step in the right direction. It may not compare to the loss of one's livelihood or investment if subsequent decisions by the court found the governments actions outside the boundaries of fair play.

In cases where the government's actions have been determined by the court to have been unethical or illegal, the federal government should be held responsible for making the taxpayer whole again for the real economic losses suffered as a result of the case.

SYSTEM TO ASSESS THE LIABILITY OF THE FEDERAL GOVERNMENT AND PERSONAL LIABILITY OF ITS AGENTS OR EMPLOYEES.

It may also be the case that the actions of particular individuals employed by the federal government may be source of the inequity. The laws may be appropriate, the administrative practices may be set out in manuals, and the vast majority of employees may be using them in the intended fashion. It may only be the isolated case where abuses of the system appear but in those instances the particular individual must be made responsible -- both for equity's sake and to protect the other employees from the consequences of the reaction that may not be fairly leveled on all IRS employees.

It is my hope that existing statutes that address this matter will be analyized to determine how they can be made more useful in creating an atmoshere where the threat of such liability will cause employees of the federal government to think twice before acting in an unehtical or illegal fashion.

This proposal is meant to create a deterrent to illegal and unethical behavior that is more or less self supporting.

In conclusion, Mr. Chairman, I wish to say that as carefully as we may craft the law in this area, the law will lack compassion. What agents of the U.S. Government can do is to dispense compassion in the application of the laws. I am sure that most dispense compassion as well as 2nd, 3rd, and 4th chances to satisfy the letter of the law far more often than they cause injustice. It is the injustice we hear about and are very concerned about.

These proposals, in conjunction with the provisions included in The Taxpayer Bill of Rights, need to be enacted to provide greater fairness for all of our citizens.

Thank you.

STATEMENT OF JACK WARREN WADE, JR., AUTHOR OF "THE POWER TO TAX," OAKTON, VA

Mr. WADE. Thank you, Mr. Chairman. My name is Jack Warren Wade, Jr. I am a self-employed tax consultant, Advisor to the National Taxpayers Union, a director of the National Society of Tax Professionals, and the author of four books on the IRS, including "When You Owe the IRS" and "The Power to Tax," a critical look at IRS's collection powers. Written in 1983, it exposed the exact same things that Mr. Smith has just testified to.

From 1971 to 1975, I was an IRS revenue officer in the Richmond District at the Bailey's Crossroads office. From 1975 to 1979, I was assigned to the IRS national office as the Program Manager for the entire nationwide Revenue Officer Training Program. During that time, I wrote and produced over 16 training publications on all phases of collection training. Mr. Chairman, because of my background and experience, I know where the skeletons are and what closets they are in.

I want to thank you for submitting the Omnibus Taxpayers' Bill of Rights Act. As a former revenue officer and a practicing enrolled agent with clients around the country, I can assure you that this bill is welcomed and long overdue.

The organizations I represent today strongly support the passage of additional taxpayers' rights and commend the chairman for his concern and diligence in addressing taxpayers' rights. Countless examples of abuses demonstrate that action needs to be taken now to protect taxpayers, and I believe that the Omnibus Taxpayers' Bill of Rights Act is a first step in the direction of true reform.

This bill is absolutely necessary because of the following facts. Fact No. 1, Senator: The IRS has a long history of a negligent disregard for taxpayers' rights; and the IRS has done very little in the way of reform to address these problems. Why is this? From as far back as the mid-1960s, taxpayers have been complaining of IRS actions that are abusive, arbitrary, and capricious.

In February 1973, a number of witnesses appeared before a Senate subcommittee and complained of abusive and arrogant IRS treatment. In January of 1976, the Administrative Conference of the United States reported that "the exercise of the formidable collection powers at times pose troublesome conflicts between the right of the Government to exact taxes and the property rights of the individual citizen."

In 1980, the Senate Subcommittee on Oversight of Government Management, chaired by Senator Carl Levin, held hearings on IRS collection policies. Almost seven years ago, IRS's very own revenue officers testified that many enforcement actions were taken arbitrarily and unnecessarily and in instances where the Government may have even suffered a revenue loss as a result. I quote from that report:

> It is disturbing that the supervisory review mechanism of seizures has been repeatedly perverted to require revenue officers to seize in cases where their own personal knowledge of the facts and professional judgment require otherwise. "Despite IRS policy which prohibits the use of statistics to evaluate employees or to impose production quotas, internal memoranda from the IRS offices around the country show that group managers and other IRS management personnel have misconducted this national office policy."

In 1983, I wrote in my book, "The Power to Tax," that "overzealous group managers have perverted the purpose of the seizure process by imposing their own macho values on their revenue officers, who are required to carry out their managers' marching orders for fear of losing their jobs."

Fact No. 2, Senator. There are too many instances where there is no judicious use of the levy authority.

Revenue officers are now again under pressure to make seizures solely to build statistics. They will use any little excuse they can to make a seizure in order to prove that they are "enforcement minded." After all, only "enforcement minded" revenue officers get promoted, and now only enforcement minded group managers get promoted.

And in my written statement, I cite several examples which illustrate that nothing has changed since the 1980 subcommittee report.

Fact No. 3. Internal Revenue Manual procedures do not confer taxpayers any legal substantive rights.

Recent court decisions cited in my written statement make this clear. Mr. Treadway's case is a perfect example. Even in another court decision regarding Melvin and Mildred Goldman, the IRS levied on their IRA account in violation of IRS policy which prohibits levies on IRAs except "when the taxpayer flagrantly disregards requests for payment."

In that case, the IRS argued in court that it did not matter if the IRS Manual guidelines were violated because "the IRS Manual itself is an internal handbook, and the instructions and guidelines contained therein are not mandatory on the IRS and they do not convey upon the taxpayer any substantive rights." And you know what happened in that case also—as in Mr. Treadway's—case? The court agreed.

Fact No. 4. Some districts do not even issue manuals to each revenue officer, and many manual guidelines—as Mr. Smith has testified—are either ignored, violated, or discarded. Under IRS's computerized manual distribution system, every revenue officer could be issued his own manual if IRS managers wanted to have it done.

Without a manual, it is difficult to comprehend how a revenue officer is supposed to know what he is supposed to do and what not to do when taking enforcement actions; but districts will not issue revenue officers manuals because they don't want the revenue officer to take the time to read it and keep it updated.

They reason that updating the manual distracts from time that could be taken on working cases and gathering seizure statistics.

Fact No. 5, Senator. Even today supervisors push revenue officers to make seizures for the sole purpose of enhancing their enforcement statistics, even if it means violating the Internal Revenue Manual.

Many times seizures must be made because it is a necessary option, but sometimes a revenue officer will seize a house, a paycheck, or a car solely because the group manager's seizure statistics are low for the month, and the revenue officer can find an easy target. And in order to make sure that the revenue officers are "enforcement minded," group managers frequently give marching

orders to impress their revenue officers with their machoistic tendencies.

Now, I can give you some examples of situations that have occurred just within the last year. One group manager in Virginia has told his revenue officers that a seizure is the first action to take on a case instead of contacting the taxpayer first; and this is a direct violation of the Internal Revenue Manual. His collection division chief has bragged that he has never released a levy in his life. He has told his revenue officers that, once a levy is served, leave it.

A branch chief in the same State told a revenue officer being interviewed for a promotion that he liked to see revenue officers make seizures without contacting taxpayers first.

And another group manager in Virginia keeps a chart of his revenue officers' enforcement statistics by ranking, a clear violation of IRS policy. He has told them that if they wanted to know what their ranking was, he would be glad to show them. The revenue officers in his group try to serve a lot of levies and make a lot of seizures so that they won't be ranked last. The group manager is always showing his revenue officers comparative statistics of how well his group's seizure statistics compare to other groups in the district.

Every one in the district is proud of their high national ranking for making a lot of seizures, but no one knows or even cares how much money is collected.

One regional analyst told one group manager in Virginia that his group's seizure statistics were down for the month. The group manager then told each of his revenue officers to make two seizures by a certain date, or they had better have a good reason why.

Fact No. 6. There is no avenue of appeals within the IRS collection division to challenge an arbitrary and capricious use of the levy authority. If the taxpayer owes the tax and only wants to challenge IRS's arbitrary and capricious use of the levy authority, he has nowhere to go.

Section 7421(a) of the Code, commonly referred to as the Anti-Injunction Act, effectively prevents almost all taxpayers from challenging IRS collection actions. Even administratively there is no formal appeals process within the IRS. Even though taxpayers can "appeal" to a revenue officer's group manager, I am here to tell you that is really an ineffective appeal. Rarely does it ever accomplish anything. Very few group managers are going to override their revenue officers' enforcement actions, particularly when the group manager knows the revenue officer is out there making seizures at the direction of the group manager.

Taxpayers should have and need an independent authority within the administrative channels to whom they can appeal their cases in certain circumstances; but this should be outside the collection division, preferably in either the Appeals Division or within the Office of the Ombudsman, who could issue taxpayer assistance orders.

Taxpayers should not have to litigate and incur the risk and expenses of legal fees to protect themselves from arbitrary and capricious actions of overzealous revenue officers.

Fact No. 7. The IRS imposes a double standard on the public and the tax practitioner community. The IRS Director of Practice has just issued proposed regulations requiring tax preparers to exercise "due diligence" in the preparation of tax returns. In certain situations, preparers must cite "substantial authority" for the positions they take on those returns. Failure to do so may result in monetary fines for the practitioner, disbarment from practicing before the IRS, and a full-scale audit of all the practitioner's clients. Yet, IRS employees are allowed to violate IRS rules, regulations, policies, procedures, and guidelines at will and without fear of recourse.

The law is so overwhelming and sweeping in its power conferred upon the tax collection authority that there are almost no checks and balances on the exercise of that authority. IRS employees should be held accountable for their violations. It is clear that the IRS is more interested in controlling, regulating, and punishing taxpayers and practitioners for their violations than they are in regulating their own employees for comparable infractions.

If this double standard continues to exist, the voluntary compliance system as we now know it could be in serious trouble. The American Revolution began with a protest over taxes, and we think it is fitting that, with the Bicentennial of the United States Constitution, Congress grant taxpayers protection against the abuses of the tax enforcement system.

Mr. Chairman, we hope the subcommittee and the United States Congress will prompty approve your proposed bill, and we will be happy to assist you and other members of the subcommittee and staff on this important set of reforms.

Senator PRYOR. Mr. Wade, thank you. You have rendered a real public service in coming here, and I know your background and your experience in the IRS, your knowledge of the interworkings of this agency. And what you have said today is most constructive. You have given some possible solutions to a problem that we all see exists, and we will have questions in a moment for you.

Mr. James McCarthy is our next witness.

Senator REID. Mr. Chairman, I am wondering if, since he summarized his statement, we could make his full statement part of the record?

Senator PRYOR. Absolutely. It will be made a part of the record, your full statement. That was a great statement, by the way.

Mr. WADE. Thank you.

Senator PRYOR. Mr. James McCarthy, Chairman of the Small Business Committee of the United States Chamber of Commerce.

[The prepared written statement of Mr. Wade follows:]

Statement of
Jack Warren Wade, Jr.

Mr. Chairman, my name is Jack Warren Wade, Jr. I live at 10862 Weisiger Lane, Oakton, VA 22124. I am a self-employed tax consultant, advisor to the National Taxpayers Union, a director of the National Society of Tax Professionals, and author of 4 books on the IRS: When You Owe the IRS (Macmillan, 1983), How to Reduce Your Withholding (Macmillan, 1985), Audit-Proofing Your Return (Macmillan, 1986), and The Power to Tax, A Critical Look at IRS's Collection Powers (National Taxpayers Legal Fund, 1983).

From 1971-1975 I was an IRS Revenue Officer in the Richmond district, Bailey's Crossroads office. From 1975-1979 I was assigned to the IRS National Office as the program manager for the entire nationwide Revenue Officer training program. During that time I wrote and produced over 16 training publications on all phases of collection training.

I want to thank you for submitting the Omnibus Taxpayers' Bill of Rights Act. As a former IRS Revenue Officer, and a practicing Enrolled Agent with clients around the country, I can assure you that this bill is welcomed and long overdue. The organizations I represent today strongly support passage of additional taxpayers' rights and commend the Chairman for his concern and diligence in addressing taxpayers' rights.

The most recent poll by the Advisory Commission on Intergovernmental Relations found that the federal income tax is now thought to be the "worst tax -- that is, the least fair." It's important for the Internal Revenue Service to maintain respect for the federal government's administration of the tax laws. Much more can be done to fairly and efficiently administer the tax system.

General Accounting Office reports, congressional hearings, and private sector survey efforts all indicate that improvements can and should be made to safeguard taxpayers' rights, particularly in the area of collections.

The countless examples of abuses demonstrate that action needs to be taken now to protect taxpayers. Internal IRS policies have failed again and again. Why? Because of a flaw in the tax collection system. Even though there are many avenues of appeal for contesting an assessment of tax, there are no appeals and checks and balances built into the process for collecting the tax. If an IRS employee violates IRS policy, the taxpayer has little recourse.

Mr. Chairman, there are many fine people at the IRS, and many who are dedicated to their jobs and to the idea of protecting taxpayers' rights. Yet within the Collection Division there appears to be a cancer of policy subversions and embattled indifference, so prevalent and so onerous that only Congress can straighten it out.

I believe that the Omnibus Taxpayers' Bill of Rights Act is a first step in the direction of true reform. This bill is absolutely necessary because of the following facts:

Fact #1 - The IRS has a long history of a negligent disregard for taxpayers' rights.

Even as far back as the mid-1960's taxpayers have been complaining of IRS actions that are abusive, arbitrary, and capricious. In February 1973 a number of witnesses appeared before a Senate Subcommittee and complained of abusive and arrogant IRS treatment. In January 1976 the Administrative Conference of the United States in their report on the "Collection of Delinquent Taxes" stated that ...

> "Congress has provided little guidance on how the IRS should use its collection powers. Nor has there been much judicial direction supplied by the Courts. The result is a large body of discretionary authority ... that is not uniformly exercised and is open to administrative abuse. As a result, the exercise of the formidable collection powers at times poses troublesome conflicts between the right of the government to exact taxes and the property rights of the individual citizen."

In that report, the Administrative Conference recommended that the IRS "establish and promulgate in the Internal Revenue Manual affirmative and specific guidelines" ... "that will assure judicious and even-handed application of the levy power."

In 1980, the Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, chaired by Senator Carl Levin, held hearings on IRS collection policies and their impact on small business taxpayers. Almost 7 years ago, IRS's own Revenue Officers testified that many enforcement actions "were taken arbitrarily and unnecessarily, and in instances where the government

may have suffered a revenue loss as a result" ... The Subcommittee report states that "these actions were taken to satisfy IRS managerial policies which emphasize closed case and enforcement statistics as premier indicators of effective collection efforts and individual performance, with no basis in actual taxes recovered." (p.2)

Senator Levin's subcommittee found that

(1) "IRS group managers abuse their supervisory review authority and require Revenue Officers to take harsh unnecessary enforcement actions contrary to the professional judgment and individual discretion vested in Revenue Officers." (p.4)

(2) "IRS violates its own policy by using closed-case and enforcement statistics to impose production pressures and quotas on its own employees." (p.4)

(3) "IRS's own Internal Revenue Manual and its policy statements ... provide little additional guidance on when to employ the levy authority." (p.7)

(4) "There are no specific criteria on when not to seize or on the other factors to be considered prior to seizure." (p.11)

(5) "It is disturbing that the supervisory review mechanism of seizures has been repeatedly perverted to require Revenue Officers to seize in cases where their personal knowledge of the facts and professional judgment require otherwise." (p.15)

(6) "Dramatic discrepancies between formal national policy and actual field practices occur." (p.16) "This distorted interpretation of national policy is not limited to group manager instructions ... The Subcommittee received information which showed consistent misinterpretations at even higher IRS managerial levels." (p.17)

(7) Regarding IRS policy which prohibits the use of statistics to evaluate employees or to impose production quotas, "Despite this prohibition, internal memoranda from IRS offices around the country show that group managers and other IRS management personnel have misconducted this national office policy."

In 1983 I wrote in my book, The Power to Tax that:

> "While the Commissioner testifies to Congress about how well IRS policy and procedure protects taxpayers' rights, the managers in the field are quietly subverting national office policy by requiring their revenue officers to follow their policy, their philosophy of collection,

and their whims and moods." (p.45)

In that book I wrote that Revenue Officer group managers, who are charged with the responsibility to "protect the revenue" and "protect taxpayers' rights" (e.g., they must approve a seizure first), are more concerned with gathering statistics for their own personal promotion. Thus "overzealous group managers have perverted the purpose of the seizure process by imposing their own [macho] values on their Revenue Officers, who are required to carry out their manager's marching orders for fear of losing their jobs."

In my book I gave numerous examples of how group managers impress the seizure mentality upon their Revenue Officers.

Fact #2 - <u>There are too many instances where there is no judicious use of the levy authority.</u>

Revenue Officers are supposed to make seizures as a last resort. Almost all IRS Commissioners have said so. The General Accounting Office has said so. Everyone outside the IRS believes it to be so. The national office even trains new Revenue Officers to believe it. Yet the former director of the Collection Division, J.R. Starkey, once told Congress that "seizure may be the first alternative."

Revenue Officers are now under pressure again to make seizures solely to build statistics. They will use any little excuse they can to make a seizure in order to prove they are "enforcement minded." After all, only enforcement minded Revenue Officers get promoted, and now only "enforcement minded" group managers get promoted. These examples demonstrate that nothing has changed since the 1980 subcommittee report:

(1) Revenue Officer Keven Koscs in Manhattan levied on a taxpayer's bank account after she called to say she was too scared to come into the office, but that she had hired an Enrolled Agent to represent her, and the financial statement was already prepared and in the mail. Without telling her that he would do so, he wiped out her bank account to punish her for not coming into the office. He stated it was "district policy."

(2) Revenue Officer Penelope Lawson in Baltimore levied on a taxpayer's bank account after he came into the office with copies of cancelled checks to show that he might not owe the tax. She was sympathetic and understanding and promised to do the necessary

research and suggested the taxpayer call her back within 10-14 days to find out the results of the research. Even though she had not completed the research to prove whether in fact he owed the tax, she wiped out his bank account because he had not called her to check on the results of the research.

(3) The U.S. District Court of Maryland (Civil Action No. M-84-3171, 11/14/84) ordered the IRS to abate a jeopardy and termination assessment against James Dwight Snyder because there was no proof that it was reasonable. The court stated that:

> "It appears that, as the plaintiff suggests, the defendant issued the jeopardy assessment to avoid paying to the plaintiff [taxpayer Snyder] a refund, which the parties, in the fall of 1983, apparently agreed was due the plaintiff for the years 1971 and 1972.

(4) Revenue Officer Joyce Marlowe of the Parkersburg district demanded that taxpayers Leland and Dorothy Sloan (U.S. District Court, So. Dist. W.Va. Charleston, 2-85-0151 5/23/86) make a large lump sum payment of his estimated taxes before she would allow him to enter into an installment agreement, although he had been making weekly payments of his estimated taxes for over 2 months. Because he disagreed with the amount she demanded he pay on his estimated taxes, and because he couldn't pay both his back taxes and her demand for a large lump sum estimated tax payment, she issued over 300 levies, effectively destroying his law practice while recovering for the IRS a mere $471.00 of the $15,357 he owed.

Following a complaint to his United States Senator and his District Director, the District Director promptly had all the levies released and the court noted that "a fair and equitable settlement was reached, as it was concluded that the enforcement procedures were excessive, unproductive, and destroying the Sloan's ability to pay tax liabilities."

Fact #3 - Internal Revenue Manual procedures do not confer taxpayers any substantive rights.

(1) In the case of "Shirley A. Lojeski v. Richard Boandl, Revenue Agent, George Jessup, Revenue Officer, et al", (U.S. Court of Appeals, 3rd Circuit, 85-1289, 85-1354, 85-1586, 85-1587, 4/22/86,

vacating and revising District Court), Revenue Officer George Jessup conducted jeopardy and termination liens against Thomas Treadway and nominee liens and levies against his friend, Shirley Lojeski, without IRS legal counsel approval, a requirement of the Internal Revenue Manual guidelines.

The IRS pleaded absolute immunity or qualified immunity at the trial. Ms. Lojeski contended that her constitutional rights had been violated because she had been deprived of her property ($22,000) without due process in violation of the Fifth Amendment.

While the Eastern District Court in Pennsylvania (C.A. #84-3591, 1/23/85) had ruled that the process due was defined by Internal Revenue Manual (IRM) guidelines which required IRS legal counsel approval before filing notices of lien and levy on the grounds of nominee liability, the IRS argued in the 3rd Circuit Court of Appeals that the IRS Manual only establishes an internal operating procedure, not a constitutional due process standard.

The 3rd Circuit Court agreed and overturned the lower court ruling stating that Ms. Lojeski "failed to show any detrimental reliance on the requirement that the IRS Regional Counsel approve the filing of notices of lien and levy based on nominee liability." Furthermore, the court ruled that the IRS had not violated her 4th amendment guarantee against warrantless seizures "for the simple reason that such actions violated no privacy interest."

(2) In the case of First Federal S&L Assn. of Pittsburgh, Plaintiff, v. Melvin & Mildred Goldman, and the IRS, defendants (U.S. District Court, West Dist. PA 85-1531, 7/29/86), the IRS levied on the Goldman's IRA account in violation of IRS policy which prohibits levies on IRAs "except when the taxpayer flagrantly disregards requests for payment." Similarly the IRS Manual concludes that levy should be made on these types of income only in flagrant and aggravated cases. It then defines the factors which are to be considered. The Goldmans contended that there was "no evidence of flagrant, aggravating, or bad faith conduct," on their part.

The IRS argued that it didn't matter if the IRS Manual guidelines were violated because "the IRM is an internal handbook and the instructions and guidelines contained therein are not mandatory and do not convey upon the taxpayer any substantive rights. The court found that:

"The procedures set forth in the IRM do not have the effect of a rule of law and, therefore, are not binding upon the IRS. The manual is not promulgated pursuant to any mandate or delegation of authority by Congress. Even if the manual was promulgated pursuant to a Congressional mandate or delegation of authority, the provisions applicable to this case are procedural in nature and do not convey upon the taxpayer any substantive right or obligation. Moreover, the provisions in the IRM are directory rather than mandatory. We conclude that the pertinent procedures of the IRM are not binding upon the IRS and convey no rights to taxpayers. Therefore, the Goldsmiths cannot challenge any alleged noncompliance with these procedures, and the levy of the IRAs, authorized by IRC Section 6331, was lawful."

Fact #4: Some districts do not issue Manuals to each Revenue Officer and many Manual guidelines are either ignored, violated, or discarded.

Under IRS's computerized Manual distribution system every Revenue Officer could be issued his own Manual. Without a Manual it's difficult to comprehend how a Revenue Officer is supposed to know what to do and what NOT to do in taking enforcement actions.

Some districts do not issue their Revenue Officers Manuals because they don't want the Revenue Officer to take the time necessary to keep it updated. Updating the Manual distracts from time that could be spent working on cases. In the Maryland district there is only one Manual per group of 12-15 Revenue Officers and it is usually kept behind the group manager's desk.

The Manual guidelines that are frequently violated are far too numerous to list but the most common ones are:

* Not contacting the taxpayer personally before filing a Fed (IRM 5315.11-12)
* Levying the taxpayer's assets before personally notifying him that enforcement action will be taken (IRM 5341)
* Not honoring a Power of Attorney on File (IRM 5180)

It is not uncommon for Revenue Officers to make personal contacts with taxpayers after they have even received a Power of Attorney from a representative. They will frequently fail to return the representative's phone calls and then use the excuse that "I tried to call but your line was busy," a known fabrication particularly if the representatives phone line is equipped with "call waiting."

Example: Kevin Koscs of Manhattan refused to return 5 telephone calls to a taxpayer's representative. Upon a complaint to his group manager, Mr. Shabowsky, the representative was told that a long distance representation from Virginia to Manhattan "couldn't be done" and that if the representative wanted to discuss the case with Revenue Officer Koscs, he "should be in Manhattan at the IRS office at 7:30 in the morning." Mr. Koscs later told the taxpayer that "IRS Collection Division didn't allow representation -- Enrolled Agents were only allowed in the audit division."

Fact #5: Even today supervisors push Revenue Officers to make seizures for the sole purpose of enhancing their enforcement statistics, even if it means violating the Internal Revenue Manual.

Many times seizures must be made because it is a necessary option, but sometimes a Revenue Officer will seize a house, paychecks, or car solely because the group managers seizure statistics are low for the month and the Revenue Officer can find an easy target.

In order to make sure that their Revenue Officers are "enforcement-minded," group managers frequently give marching orders to impress their Revenue Officers with their "machoistic" tendencies. For example:

* One group manager in Virginia has told his Revenue Officers that a seizure is the first action to take on a case, instead of contacting the taxpayer first, a clear violation of Internal Revenue Manual sections 5181 and 5355.11:(2). He further states that if there is a levy source on file, then the Revenue Officer should first levy even though the taxpayer may not owe the tax, reasoning that the IRS could always release the levy later.
* However his collection division chief has bragged that he has never released a levy in his life. He has told his Revenue Officers that "once a levy is served, leave it."
* A Branch chief in Virginia told a Revenue Officer being interviewed for a promotion that he "Liked to see Revenue Officers make seizures without contacting the taxpayer first."
* Another group manager in Virginia keeps a chart of his Revenue Officer's enforcement statistics by ranking. He has told them that if they wanted to know what their ranking was, he would

be glad to show them. The Revenue Officers in his group try to serve a lot of levies and make a lot of seizures so they won't be ranked last. The group manager is always showing his Revenue Officers comparative statistics of how well his group's statistics compare to other groups in the district. Everyone in the district is proud of their "high national ranking" for making a lot of seizures. No one knows or even cares how much money is collected.

* Because a regional analyst had told one group manager in Virginia that his group's seizure statistics were down, the group manager told each of his Revenue Officers to make 2 seizures by a certain date or they had better have a good reason.

Fact #6: <u>There is NO avenue of appeals within the IRS Collection Division to challenge an arbitrary and capricious use of the levy authority.</u>

If a taxpayer owes the tax and only wants to challenge the IRS's arbitrary and capricious use of the levy authority, he has no where to go. Section 7421(a) of the Code, commonly referred to as the Anti-Injunction Act, effectively prevents almost all taxpayers from challenging IRS collection actions.

Even administratively there is no formal appeals process within the IRS. Even though taxpayers can "appeal" to a Revenue Officer's group manager, this is an ineffective "appeal." Rarely does it ever accomplish anything. Very few group managers are going to override their Revenue Officer's enforcement actions, particularly when the group manager knows he needs the statistics.

Taxpayers should have an independent authority within the administrative channels to whom they can appeal their cases in certain circumstances. This should be outside the Collection Division, preferably in either the Appeals Division or within the Office of the Ombudsman. The taxpayers should not have to litigate and incur the risks and expenses of legal fees to protect themselves from arbitrary and capricious actions of overzealous Revenue Officers.

<u>Example</u>:

On August 14, 1984 Collection employee Robert A. Manners of the Atlanta district contacted taxpayers Richard B. and Virgina Harding

about an upaid assessment. Two days later their attorney contacted Mr. Mannners and informed him that the assessment was being appealed and that enforced collection action should cease immediately. Despite this on November 23, Mr. Manners sent a subsequent demand for payment. On December 11, 1984 the taxpayers filed a lawsuit seeking an injunction against enforced collection activity. Yet, on December 21, 1984, after the lawsuit was filed, the taxpayers received another notice and demand for payment which stated that this was the final notice and the United States planned to levy on their assets within 10 days if the tax was not paid. On February 15, 1985 the assessment was abated, but the taxpayers were forced to file suit for recovery of their attorneys fees (U.S. District Court, No. Dist. GA, Atlanta Div. C84-2497A 5/25/86)

Fact #7: The IRS imposes a double standard on the public and the tax practitioner community.

The IRS director of Practice has issued proposed regulations requiring tax preparers to exercise "due diligence" in the preparation of tax returns. In certain situations, preparers must cite "substantial authority" for the positions they take on tax returns. Failure to do so may result in monetary fines, disbarment from practicing before the IRS, and a full scale audit of all the preparers' clients.

Yet, IRS employees are allowed to violate IRS rules, regulations, policies, procedures, and guidelines at will and without fear of recourse. The law is so overwhelming and sweeping in its power conferred upon the tax collecting authority that there are almost no checks and balances on the exercise of that authority.

Taxpayers need more protections from the arbitrary and capricious abuses of the IRS and IRS employees should be held accountable for their violations.

It is clear that the IRS is more interested in controlling, regulating, and punishing taxpayers and practitioners for their violations than they are in controlling, regulating, and punishing their own employees for comparable infractions. If this double standard continues to exist, the voluntary compliance system as we now know it could be in serious trouble.

Part II - Reasons Why We Support this Bill:

The Omnibus Taxpayers' Bill of Rights Act contains many important safeguards to assure that taxpayers' rights will be respected. I will now briefly address some of the provisions in the bill we consider to be most important.

SECTION 4 — Procedures Involving Taxpayer Interviews.

Section 4(a) requires that IRS audits be conducted at a time and place that is as convenient to the taxpayer as it is to the IRS. For the most part, taxpayers usually conform their schedules for the convenience of the IRS, but IRS auditors should be just as willing to hold an audit at a time and place beneficial and convenient to the taxpayer.

It also allows taxpayers to record an audit interview. Even though the IRS now allows recorded interviews, this right is so important as to be safeguarded by law.

Section 4(b) requires that the IRS advise the taxpayer of his rights to have a representative accompany him during the interview, that he has the right not to disclose any information or evidence that he believes would violate his 5th Amendment rights against self-incrimination, and that he has the right to consult an attorney or other appropriate representative at any time during the interview. Although the IRS audit is a civil matter, it is also a procedure that could lead to a criminal investigation. Even though it may seem that informing every taxpayer of these rights before an audit interview could unnecessarily alarm them, the language could be constructed in a non-threatening manner while being informative and beneficial to the taxpayer's constitutional rights against self-incrimination.

Section 4(c) allows the taxpayer to send an authorized representative holding power of attorney to represent the taxpayer during such interviews.

SECTION 6 — Basis for Evaluation of Internal Revenue Service Employees.

Unfortunately, many Internal Revenue Service supervisors like to keep score on seizure statistics and other collection actions

performed by their personnel. Despite an alleged IRS national policy against quotas for evaluation of IRS personnel, the fact of life is that employees are measured by these statistics and quotas are set. This section would prohibit IRS supervisors from basing evaluation of their employees in any way on the sums collected from taxpayers. It needs to be expanded so that it clearly applies to collection actions.

SECTION 8 — Levy and Seizure Safeguards.

Section 8(a) -- IRS notices of intent to seize would have to inform taxpayers of appeal procedures, possible alternative collection remedies, and the tax code provisions and procedures on seizure and sale of property. In 1978 the GAO reported that 25% of the taxpayers they interviewed were not aware of IRS's seizure authority and 57% were not told that seizure was the next action to be taken. While IRS's computer notices do inform taxpayers of this right to seize, the notices are not clear enough in conveying IRS's intent to seize and when seizure will occur.

The IRS would also be required to notify taxpayers of their rights under the code allowing for a redemption or release of property at the time of seizure. IRS employees are not required by any code provision, regulation, or any manual direction to notify the taxpayer of these rights. These changes are needed to prevent any misunderstanding about the taxpayer's right for return of his property after seizure.

This section would also change the ten day notice and demand period to 30 days. At present, the IRS is only required to wait ten days after mailing a notice and demand of an existing tax liability before any seizure action is allowed. Ten days is insufficient time for a taxpayer to either respond or obtain sufficient funds to pay the tax. Thirty days is a more reasonable period.

Section 8(b) -- Currently, the effect of a levy made upon a taxpayer's salary or wages is continuous until the liability is either paid or becomes unenforceable, because of lapse of time. This provision would terminate a continuous levy if the taxpayer enters an installment agreement or the liability is unenforceable due to financial hardship of the taxpayer.

IRS regulations provide that a levy <u>may</u> be released when it will facilitate collection of the tax and "the delinquent taxpayer makes

satisfactory arrangements to pay the account of the liability in installments." But the Code makes no provision for the right of taxpayers to enter into an installment agreement, nor does it provide for the release of a levy for conditions other than full payment. There are times when an installment agreement should be considered as preferential over the seizure and sale of property, even when the installment agreement does not necessarily immediately facilitate collection of the liability. Because Section 8(b) requires the IRS to release a levy when the taxpayer enters into an installment arrangement, it thereby removes the condition that the installment arrangement must facilitate collection.

Presently, a taxpayer who has a financial hardship, but who has experienced an IRS levy of his property is not entitled to a release of the levy by either the Code, IRS regulations, or IRS policy.

Section 8(c)(1) raises the levy exemption amounts from $1,500 to $10,000, a level sufficient to protect a taxpayer's household furniture and personal effects. It should also apply the levy exemptions to all taxpayers. The Code presently only allows personal property exemptions to "heads of a family," apparently not protecting single taxpayers.

Section 8(c)(2) also raises the exemptions for books, tools, equipment and property for a trade, business, or profession to $10,000, to better reflect the essentials needed for an individual to be able to support himself. Except for a small change made in TEFRA, the exemptions from levy have not changed since adoption of the 1954 code. Even now, though, the amounts of exemption provide little protection for taxpayers since they do not reflect the substantial increases in the cost of living since 1954. The bankruptcy laws provide better protection for debtors than taxpayers receive from the Tax Code.

The right of an individual to be self-supporting and thus able to pay his taxes needs to be recognized in the levy provisions of the Tax Code.

Section 8(c)(3) raises the exempted weekly amounts from levy upon a taxpayer's wages, salary, or other income to $150 from $75 for himself, and to $50 from $25 for each dependent or spouse. Current exemptions are too low. Few, if any, taxpayers could possibly maintain themselves or their families under such a levy. Congress

intended to reform the levy provision of the Code by making continuous the levy upon wages, salary, and other income and by allowing the weekly exemption amounts from levy. But these provisions, which first originated in the Tax Reform Act of 1976, are actually more restrictive and burdensome to taxpayers than the previous levy provisions which did not allow minimum exemptions and which were not continuous.

Section 8(c)(3)(B) clarifies the Code by applying the weekly exemptions to the wages, salary, or other income subsequently deposited into a financial institution. IRS regulations clearly ignore the meaning of the words "received by" when specifying the minimum exemptions from levy for wages, salary and other incomes "payable to or received by an individual" as specified in the Code. The effect of this is to grant certain weekly exemptions to a taxpayer on his wages, salaries, or other income before it has been paid to the taxpayer, but to deny the taxpayer these same exemptions after his wages, salary, or other income, has been paid and deposited into a financial institution. The Tax Reform Act of 1976 appears to apply these minimum weekly exemptions from levy to wages, salaries, and other income already received by a taxpayer.

Section 8(c)(4) says that levy or seizure action on a taxpayer's residence, his primary source of employment transportation, or his business assets necessary for carrying on his trade or business could only be authorized by IRS district management. An exception is made when the collection of tax is in jeopardy. The levy power of the IRS is a far-reaching authority. Next to criminal enforcement, distraint action is the most sweeping action that adversely affects taxpayers. It should not be just the decision of a collection employee and his immediate supervisor, but should represent an agency decision. Requiring approval at the District Director level will ensure that these types of seizures are warranted.

Section 8(d) -- The IRS would be restricted from seizing any taxpayer's property when it is apparent prior to seizure that the government's expenses incurred in seizing and selling the property exceed the estimated value of the property or the tax due. This would prevent the IRS from making purely "harrasive" seizures.

The IRS would also be restricted from seizing a taxpayer's property on the same day the taxpayer is responding to a summons

issued by the IRS. This would prevent, for example, the IRS from seizing a taxpayer's car in the IRS parking lot while the taxpayer is responding to the IRS summons.

Section 8(e) entitles taxpayers to a release of levy under certain conditions. This section should require the IRS to release a levy when: the tax liability has been satisfied; the release of the levy will facilitate the collection of the liability; the taxpayer has entered into an installment agreement; the taxpayer can substantiate grounds for financial hardship; the expenses of levy and sale of such property exceed the amount of such liability, and the value of the property exceeds such liability and the release of the levy on a part of such property could be made without burdening the collection of such liability. The provision does not restrict the IRS from making a subsequent levy on the property released under this provision.

IRS regulations currently specify certain conditions that are considered to "facilitate collection of the liability" before a release of levy can be made without full payment by the taxpayer. IRS policy imposes another condition not stated in the regulations or the Code that says "subsequent full payment must be provided for." The imposition of current IRS policy in these situations constitutes such an unreasonable burden and requirement on taxpayers as to deny them their Fourth Amendment right against unreasonable searches and seizures.

SECTION 9 — Review of Jeopardy Levy or Assessment Procedures.

Section 9 expands the judicial review of jeopardy assessments to also include jeopardy levys. It gives the taxpayer 90 days to make a judicial appeal, rather than the current 30, which is far too restrictive and unreasonably short.

The Tax Reform Act of 1976 provided for judicial review of jeopardy assessments. But there is no judicial review of a jeopardy levy made without regard to the 10-day notice and demand period required by section 6331(a). Under IRS policy, as provided in the Internal Revenue Manual section 5213.4, revenue officers may request that immediate assessments be made on voluntarily filed tax returns, and that they may enforce collection without regard to the 10-day notice and demand period when certain conditions exist. These

conditions are so vague that they could be applied to almost every taxpayer who can't pay in full at the time he files his return. A jeopardy levy made by the IRS could actually hinder the taxpayer's efforts to raise enough money to fully pay the liability, and could cause the taxpayer to suffer needless financial damage and losses. The jeopardy levy should be used judiciously and the IRS should be held accountable to the courts if they abuse their exercise of this power.

SECTION 10 — Installment Agreements to be Binding.

Section 10(a) authorizes the IRS to enter into a written installment agreement with a taxpayer if such an agreement will facilitate collection of the tax.

Section 10(b) -- Any individual income taxpayer who owes the IRS less than $20,000 and who has not been delinquent in the prior three years, would be entitled to pay his tax liability in installments consistent with his ability to pay.

Section 10(c) requires installment agreements to be binding on the IRS. It allows the IRS to disallow an installment agreement if the taxpayer failed to provide adequate and accurate information. It also provides for procedures to revise an installment agreement if a taxpayer's financial circumstances change.

There is broad evidence that the IRS has a double standard regarding the terms of the installment agreement. If a taxpayer does not comply with all the terms of the agreement, the IRS reserves the right to cancel the agreement and levy the taxpayer's property without further notifying the taxpayer.

But the IRS has been known to revoke installment agreements, sometimes without notification to the taxpayer, even when the taxpayer has been in compliance with all the terms of the installment agreement. Such revocations usually occur when the taxpayer's case has either been transferred to a new Revenue Officer, or a new management official has reviewed the case and arbitrarily revoked the agreement. If the IRS considers the installment agreement a contractual arrangement to be upheld by taxpayers, then taxpayers should also have the right to expect the IRS to uphold its end of the contractual obligation.

Revenue Officers frequently revoke installment agreements with

nothing more substantial than an alleged belief or knowledge that the taxpayer's financial condition has changed, or improved. For this reason, taxpayers who have entered into installment agreements need Code protection from arbitrary and capricious use of IRS's powers. Section 10(c) allows the IRS to review a taxpayer's financial situation during the course of the installment agreement, but requires that taxpayers be given proper notification and that a hearing be held on such financial review. Thirty days for responding are provided and should be sufficient.

SECTION 11 — Written Advice Given by Officers and Employees of the IRS to be Binding.

Section 11(a) requires that any information, advice, or interpretation given in writing to a taxpayer by an officer or employee of the IRS acting in his official capacity be binding. Any tax liability resulting from incorrect advice would be abated.

It makes a logical and reasonable exception to this requirement when the taxpayer fails to provide adequate and accurate information.

An IRS policy statement states that "Taxpayers will assume that they can rely on the accuracy of all official publications." Written information and advice should be reliable and binding.

Section 11(b) should instead require the IRS to make provisions for notifying the public that any oral information, advice, or interpretation given by an IRS employee may not be binding. This notification could occur by posting signs in IRS offices and printing caveats in IRS publications. A GAO report released this week states that fully 22% of all IRS oral advice is wrong, and another 15% of their answers were incomplete.

SECTION 12 — Taxpayer Assistance Orders.

The Ombudsman administers the Problem Resolution Program, but has no power to intervene in any enforcement proceeding or activity in a formal manner. Currently, under this provision, the Ombudsman would have authority to administer an administrative appeals procedure that would review either pre-levy or post-levy petitions to ensure that the IRS has complied with the law. This is not enough. This procedure should also ensure that the IRS follows its own policies as described in the regulations or Internal Revenue Manual.

Upon review the Ombudsman would be able to intervene to either prevent a levy, or to release a levy. This appeals procedure should be limited to a specified period of time, perhaps 120 or 180 days. In combination with its restriction to specified circumstances, there is very little chance of taxpayers using this procedure to unduly forestall collection of the tax. On the contrary, the taxpayers who are experiencing unreasonable IRS actions would be entitled to an administrative appeals procedure that would protect them from enforcement actions which are improper or designed more for harrassment than for collecting the tax.

It's essential that another avenue of appeal to a U.S. District Court be provided for the situations outlined in this section should the Office of Ombudsman fail the taxpayer's request.

The IRS Ombudsman should be a political appointee, not a career IRS employee. As a political appointee, the Ombudsman would be free to be a true taxpayer advocate without worry for his career aspirations, or about how other IRS managers feel about his input into their areas of responsibility. A political appointee would come to the job independent of the restrictive mission-oriented mentality that besets so many IRS career executives. Not being ingrained with IRS philosophy and methods of operation, he would be more understanding of the rights of individual taxpayers.

The Ombudsman should also establish procedures to review and evaluate taxpayer complaints. The Ombudsman should also survey taxpayers to obtain an evaluation of the quality of the service provided by the IRS and the Ombudsman. With the IRS continually changing its procedures and tax forms, the Ombudsman can serve as a safeguard to ensure that taxpayers' rights are being respected and that taxpayers are not unnecessarily paying too much in tax.

The Ombudsman should also compile data on the number and type of taxpayer complaints in each area of the country, and the response to such complaints. The Ombudsman would submit an annual report to the congressional tax writing committees along with any recommended legislation.

SECTION 14 — Minimum Price.

Section 14 reforms the procedures for setting a minimum bid price for sale of seized property. When real or personal property has been

seized by the IRS, a minimum bid price must be established before the property can be offered for sale. A minimum bid price is the lowest bid the IRS will accept at a sale of the seized property. This prevents seized property from selling for substantially less than the forced sale value of the property.

The IRS has designed a formula for computing the minimum bid price, but IRS policy requires that after using the formula, the minimum bid price must not exceed the tax, penalty, interest, and all other charges on the account. For instance, if the taxpayer owes the IRS $50,000 and the minimum bid formula indicates an otherwise minimum bid of $75,000, the IRS will restrict the minimum bid to the $50,000 amount the taxpayer owes the IRS. In this example, the IRS could sell the taxpayer's property for $50,000, resulting in a substantial loss to the taxpayer of $25,000. But if in this case the taxpayer owed $75,000 or more the minimum bid formula would be used without restriction and the property would be sold for not less than $75,000, thereby preserving the taxpayer's equity in the property. This practice was noted by the GAO in their report of July, 1978 entitled "IRS Seizure of Taxpayer Property: Effective, But Not Uniformly Applied." The GAO also said that the IRS was applying the provisions of 31 USC 195 even though those provisions did not apply to IRS seizures and sales.

Mr. Chairman, we hope the Subcommittee and the U.S. Congress will promptly approve your proposed bill. We will be happy to assist you, other members of the Subcommittee, and staff, on this important set of reforms.

STATEMENT OF JAMES D. McCARTHY, ESQUIRE, CHAIRMAN OF THE SMALL BUSINESS COMMITTEE OF THE U.S. CHAMBER OF COMMERCE

Mr. McCARTHY. Good morning, Mr. Chairman. I would ask that our prepared statement be made part of the record as well.

Senator PRYOR. It will be, and it will appear in the appropriate place.

Mr. McCARTHY. My personal practice is in the area of advising small business clients, and I am also called upon to advise other practitioners with small business problems—tax problems—across the United States. I, too, am an ex-IRS agent, and I applaud this bill; and I think it is especially needed. I came in here loaded with fire and brimstone and with examples and so on, but a lot of them look a little shallow compared to what my predecessors have given.

I am going to try and hit a few parts of the bill and comment on them, parts that I think haven't been touched by the others. The very last provision of the bill is the idea that the IRS should be brought under the Regulatory Flexibility Act, which nobody has commented upon and which I think is critical. The IRS, as I understand is, has avoided coverage in the past on the grounds that much of their work is interpreted and so on and is not subject to this type of coverage, which is not true, especially in the enforcement area. The IRS and Treasury have apparently no idea, in many cases, of what the real world is all about.

The persons who put out the W-4 Form—that should have been cut off before it was released. Before that, we had the auto log fiasco; somebody should have cut that off before it was released. When Treasury introduced its Treasury I, T-I, they suggested that we have one tax rate for all corporations, large or small. And while we were testifying on that point, the Treasury person came back and said, well, let the small businesses all elect "escorp" status, which would be absurd.

Before that, they came out with an idea that small businesses should withhold taxes on 1099's when they give them to independent contractors. It would place an impossible burden on small businesses. They came and said that the small business person would be compensated because they could work with the "float." Making small business persons use the 1099's with special typewriters and so on; so it is clear they do not understand the problems of small business and individuals, and we need them brought within the purview of this Act.

The expansion of the authority on the Ombudsman, which is provided in this bill, is an excellent idea. I would suggest that the person selected not be an IRS employee or an IRS employee getting ready for retirement, but would be a person who can see both sides of the picture and will act with impartiality. The new bill gives—relief, which I think could be dangerous; but I have read it over many times, and I think it provides excellent safeguards against its being misused.

The bill provides for the right of a taxpayer to have representation, which is very timely. During the past year, the IRS has changed its procedures and tried to come up with a procedure whereby a taxpayer's representative could not appear on behalf of

a client. In other words, it would have to have the client along in all cases; and that isn't fair.

The disclosure provisions requiring better disclosure to taxpayers. In the audit area, the present disclosure provisions aren't too bad; and as a matter of fact, in just listening to all of the other testimony, I think most of the problems don't seem to fall too much in the audit area, but they seem to fall in the collection area.

But the disclosure provisions to taxpayers in the collection area are terrible. There is a device called an "offer and compromise" that is not very well known that is used differently—completely differently—in every district office in the United States. Each one has its own set of rules.

The installment payment system is strictly a whim of the collection officer, and this bill will do a great job in that area by spelling out some rules that we can all follow.

As my predecessor have said, the IRS says they do have a set of rules in the operations manual that cover it, but nobody reads the operations manual.

My latest case involved a person who had been employed for many years and opened up his own courier service, and his return was audited and the assessment was made so far as I can see within 10 days. There is a provision in the law that says if you make a clerical error on your return, an assessment can be made with one simple notice.

So, the assessment was made. He owed about $2,100. He went to the collection officer, no talk at all about an installment plan or anything. Get the money or we are going to take everything you have. He went to a dumb lawyer who put him in bankruptcy, went out of business, lost his business. He went on for a couple of years and finally came to us.

We looked into the thing, and we found that the IRS apparently had lost his Schedule A, his itemized deduction schedule, and so they made this assessment within this purview on the grounds that there was a clerical error on the return when there wasn't. We worked for about a year with him, got the Schedule A in, and it turns out that he got a $600.00 refund. So, with guidelines that are provided in this bill, that will provide for special rights of installment systems, that would not have happened.

The bill does a good job in the levy area. It provides better exemptions for levies, and it provides a better notice system for levies. And the notice area is especially important. In preparing for the hearing, we went out and got eight examples of what we turned would be IRS "horror" stories. Two of them clearly, when we looked into them, weren't horror stories at all, but they were cases where the taxpayers had goofed up themselves.

Two truly were IRS horror stories. They are cases where installment cases had been entered into, and they were being complied with; and at the same time, they went out and made a levy. One area didn't know what the other was doing.

The other four clearly showed a need for improvement, and there are several special areas where improvement was obvious. The notices that the IRS say they give everyone are computer generated, and the computer can't be relied upon.

Computer-generated notices should not be legal. The computer has gone bad again just within the last month or so, and the last three notices that I have received for clients have all been wrong. Second, the persons didn't have the right to get into an installment arrangement and weren't told of their installment rights by the collection officer.

Another part of this bill would impose upon the IRS the burden—in taxpayer conflicts—on the IRS to prove its point. Part of that is good and part of it is not so good.

I don't think that is going to work in substantive areas, in areas where there is an interpretation of the law; but I think it will work very, very well in procedural areas. And where there is a levy to be made, I think the procedures should provide that if one particular person is responsible, that person should see to it that there has been personal service, and that person should see to it that they have taken every possible effort to resolve this thing with an installment program or some other solution before they are allowed to make the levy, and that person should be held personally responisible.

Other areas of notice are just as bad. This clerical thing I mentioned a minute ago—the IRS can make an assessment within ten days if you have supposedly made an error on the tax return. I represent a number of students at the University of Maryland who receive graduate stipends; and the issue is whether this is income or truly an exempt fellowship. Every time they claim this exemption on their return, the IRS makes the 10 day assessment, comes after them, and tells them that they have to pay the money and file a claim and get a lawyer to claim a refund.

A responsible corporate officer. If you have a corporation and it goes defunct, the IRS will go after every person who had anything to do with that corporation, including the janitor. You will get two little notices that are very, very innocent looking; one is a 10-day notice and the other is a 30-day notice. The assessment is made, and they are going to hook you for the money and tell you to file a claim and get a lawyer.

The third and the most important is the so-called "reasonable cause." You file your return; it is late. You have the right to have the late filing penalty; you have it dated. If you can show you have reasonable cause, you get 10 days notice; and it may or may not received. And 'whammo' the assessment is made after that, pay the tax, hire a lawyer, and claim a refund.

There are a number of other areas, but I think they have been covered pretty well by my predecessors. I will just close in stating that I, too, was an IRS agent. I know that tax collectors have never been popular. I guess since biblical times the tax collectors have been kind of jumped upon. I was proud to be a revenue agent and proud to let my friends know that I was, but I am not sure that I would take that same position now.

The IRS is the most hated organization in the United States. People would rather deal with the KGB. [Laughter.]

Mr. McCarthy. I wrote a tax letter for practitioners for about 10 or 15 years; and any time I made a comment in that tax letter that was halfway favorable to the IRS, I got all kinds of response. Our self-assessment system was the pride of the world at one time, and

I think it is now being changed into a police state system, based on computer matchings. And for those of you who have kids, don't forget you have to get their tax number if they are at least five years of age.

Thank you.

Senator PRYOR. Mr. McCarthy, I thank you. In a moment, I will have a couple of questions that specifically relate to small businesses.

Next, we have Mr. George M. Parker, who is here today testifying representing the National Society of Public Accountants. I believe you are from Alexandria, Virginia, Mr. Parker, and we appreciate your being here and look forward to your statement.

[The prepared written statement of Mr. McCarthy and a letter to Senator Reid follows:]

STATEMENT
on
THE OMNIBUS TAXPAYERS' BILL OF RIGHTS ACT (S. 604)
before the
SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND
OVERSIGHT OF THE INTERNAL REVENUE SERVICE
of the
SENATE COMMITTEE ON FINANCE
for the
U.S. CHAMBER OF COMMERCE
by
James D. McCarthy
April 10, 1987

Mr. Chairman and members of the Subcommittee, I thank you for the opportunity to present testimony on S. 604, the Omnibus Taxpayers' Bill of Rights Act. I am Jim McCarthy, an attorney and Chairman of the U.S. Chamber of Commerce's Small Business Taxation Subcommittee. I have been practicing tax law for thirty-five years, during which time I have represented many thousands of individual and small business taxpayers in Internal Revenue Service (IRS) disputes. For eleven years, I have served the IRS in several capacities -- as an agent, as Assistant Director of IRS Practice, and as a Technical Coordinator for the IRS National Office Audit Division.

The Chamber is reviewing S. 604 in full detail. We think that the Omnibus Taxpayers' Bill of Rights Act is important legislation that will ensure that the tax collection process is carried out with integrity and efficiency. We commend the Subcommittee for taking such an active role in addressing issues that are of particular concern to individual and small business taxpayers.

The vast majority of the Chamber's 180,000 members are small businesses with fewer than 100 employees. These small businesses are the taxpayers which are most adversely affected by inequitable tax collection procedures. This is because small businesses can not afford to maintain full-time, in-house counsel. Consequently, many small businesses fall victim to heavy-handed collection tactics sometimes used by the IRS.

April 15 is approaching quickly, and all of us are reminded of our obligation to pay our share of taxes. This has never been a favorite pastime and the IRS has never been a favorite institution. We realize that the IRS is faced with the monumental task of processing some 180 million tax returns each year. Certainly, most returns are handled without incident, and we applaud the many thousands of IRS employees who perform their often difficult and unpopular duties with professionalism and efficiency.

Nonetheless, in too many cases, honest individual and small business taxpayers have experienced such frustration in their dealings with the IRS that the very idea of volunteerism in the tax collection process is threatened. For example, many small business owners have complained to me as a practitioner and to the Chamber's staff of receiving computer-generated notices indicating an amount due. In a typical situation, a taxpayer either will pay the amount due on the notice, if the taxpayer believes that the IRS is correct in its calculations, or if the taxpayer disagrees with the IRS, he or she will write to or call the IRS in an attempt to rectify the mistake. In either situation, the typical IRS response is, unfortunately, no response, even after repeated, good-faith efforts by the taxpayer to resolve the dispute. The notices continue

to be generated, and the taxpayer's frustration continues to grow. To compound the taxpayer's frustration, these notices are often ambiguous, providing virtually no detail to substantiate the IRS's claims or even the nature of the purported liability.

We believe that a higher degree of tax compliance would be achieved if the nature of the IRS-taxpayer relationship were less adversarial and less one-sided. An improved relationship requires that the IRS be perceived as a fair administrator of the tax laws.

The Omnibus Taxpayers' Bill of Rights Act is a step in the right direction. It is consistent with the IRS's own policy to collect tax revenues in a manner that achieves the highest degree of public confidence. Many of the provisions contained in the bill would promote this goal. It is in everyone's interest that taxes be collected in the fairest possible way.

Several important provisions of the bill deserve special comment:

1) Taxpayer rights. Section 2 of the bill would require the IRS to enclose a brief, yet comprehensive, statement setting forth a taxpayer's rights and obligations with all forms sent by the IRS. This is an idea long overdue. In many instances, disputes arise because taxpayers lack the understanding of the specific steps that they must take, for example, during an audit. Certainly, no taxpayer should be required to pay high attorney or accountant fees merely to obtain basic information on his or her rights or IRS procedures.

However, if a taxpayer seeks the professional representation of an attorney, CPA, or enrolled agent and chooses to give that professional a power of attorney to represent his or her interests in a deficiency proceeding, the IRS should be required to honor that power of attorney, provided that both the taxpayer and the representative are reasonably cooperative with the investigating agent. This provision is contained in Section 4. This provision recognizes that in the majority of cases, experienced IRS personnel have the upper hand in dealing with often inexperienced and ill-informed taxpayers.

The requirement in Section 4 that interviews in connection with any deficiency assessment be conducted in a "reasonable" and mutually "convenient" time and place is laudable and will ensure the cooperation of both parties. One small businessman complained to us that although he lived within a few miles of a local IRS office, the agent required him to drive an extra 100 miles to a different IRS office for the audit. The agent also insisted that the examination be conducted during the taxpayer's peak business hours. The taxpayer had to close shop and, as a result, lost substantial time and money. Ultimately, the agent found nothing improper in the taxpayer's records. We think that where there are more practical alternatives, unnecessary burdens should not be placed on taxpayers. In the interest of all parties, however, we would hope that the definition of "reasonableness" is clarified and given greater content.

We are concerned, however, that the Miranda-type warnings proposed in Section 4 may be overbroad. The very nature of the IRS-taxpayer relationship tends to be antagonistic. While practices that inform taxpayers of their rights

should be encouraged, these practices should not have the effect of escalating existing tensions. Thus, while we support the provision's good intentions, we doubt whether such warnings are appropriate in all circumstances.

2) Levy procedures. Section 8 of the proposed legislation would provide increased taxpayer protections with respect to levy procedures. Specifically, it requires the IRS to wait 30 days after notice, instead of 10 days, before it could levy a taxpayer's property. This proposal would encourage delinquent taxpayers to satisfy their obligations by providing sufficient time to borrow money, liquidate assets, or make other payment arrangements. The action of levy may be necessary to collect taxes due from willful evaders, and unquestionably the IRS should have the power to levy under appropriate circumstances. However, policies that have the effect of jeopardizing the continuation of legitimate businesses are shortsighted, often cost the government revenue, and deserve reconsideration.

3) IRS installment agreements. Section 8 would require the release of a levy upon all, or part of, the property levied upon if a taxpayer enters into an installment payment agreement to satisfy a tax liability. Section 10 generally makes installment agreements binding. These proposals are worthy of consideration, for they would ensure that the IRS receives the money due while allowing the taxpayer to remain solvent. It is in the IRS's own interest to endorse practices that reasonably would allow taxpayers to satisfy their tax obligations, with appropriate interest and penalties, and that would eliminate many taxpayers' fear that the IRS will renege on their agreement.

Unfortunately, levies often are issued against taxpayer bank accounts and receivables even though the IRS and the taxpayer have agreed to an installment payment plan to satisfy the delinquency. This practice is detrimental and has forced many small businesses out of business.

While we encourage the use of installment payment agreements in appropriate and limited circumstances, we have serious reservations with respect to the proposal that requires the IRS to make written offers to enter into installment agreements with taxpayers whose liabilities do not exceed $20,000. We understand that the vast majority of delinquent accounts are for amounts less than $20,000. To enact such a provision would encourage taxpayers to defer tax payments, significantly increase the IRS's administrative record-keeping burdens and, in effect, force the government to assume the role of a lending institution. Thus, we think that this provision is overbroad and counterproductive.

4) Ombudsman. Section 3 would authorize the Ombudsman to issue "taxpayer assistance orders," requiring the IRS to cease certain actions only with respect to taxpayers who are suffering or about to suffer from an unusual, unnecessary, or irreparable loss due to the inappropriate administration of the tax laws. Thus, the Ombudsman's authority to issue orders would be limited. Sec. 3 is perhaps the most important provision in the bill because it would provide taxpayers with an inexpensive and quick manner of resolving disputes where the IRS is clearly in the wrong. The proposal recognizes the need for occasional intervention to prevent unjustifiable harm to taxpayers.

The most common complaints voiced by Chamber members and most tax practitioners relate to payroll deposits that taxpayers have paid but the IRS misapplied, lost, or otherwise confused. The IRS can be utterly uncooperative in identifying the source of a purported deficiency and impose levies against taxpayers that owe no additional tax. Equally as important, these administrative errors take tremendous amounts of the business owner's time and force him or her to incur large professional fees.

One of many examples that recently came to our attention was a small Baltimore medical practice paying about $800 in payroll taxes per week that began to get deficiency notices in early 1986. Eager to resolve any dispute, the firm sent copies of the front and back of cancelled payroll deposit checks for every week in the years 1984 and 1985 to the IRS, first to Philadelphia and then to Baltimore. They sent their accountant to the IRS office in Baltimore twice. Throughout the episode, the IRS people promised to look into the matter and then never called back. The next time they heard from the IRS was in June, 1986, when their checking account was levied. In September, the IRS called to explain that it had applied 13 payments to the wrong account and sent a refund check -- a check that had come with no description and that the firm had assumed was in satisfaction of a prior dispute. The issue of penalties and interest associated with this matter is still unresolved.

The Ombudsman would be able to prevent such abuses. Because the Ombudsman's role is to safeguard taxpayer interests, it is important that maximum objectivity is maintained and that taxpayers feel free to contact the Ombudsman without fear. Accordingly, an Office of Ombudsman with independent

authority should be established.

5) Office of Inspector General. In August of last year, the General Accounting Office (GAO) issued an extensive report, at the request of the Senate Governmental Affairs Committee Chairman, regarding the need for a statutory Inspector General within the Department of the Treasury. The report noted that Congress passed the Inspector General Act of 1978 to "establish statutory inspector generals that would provide central leadership and independence to agencies' efforts to combat government fraud, waste, and abuse." The bottomline recommendation of the GAO report: Congress should amend the 1978 act to include the Department of the Treasury to "strengthen management control, provide a high degree of independence, and ensure that the Secretary of the Treasury and the Congress are informed of significant audit and investigative findings." We think that Section 3 of the proposed legislation, which establishes an Office of Inspector General, is a meritorious proposal. Additionally, Section 5, which requires the GAO to submit to Congress an annual report on significant evidence of IRS inefficiency or mismanagement, will enable the Congress to gauge better the magnitude of IRS administrative difficulties.

6) Regulatory Flexiblity Act. We wholeheartedly support the proposal contained in Section 17 to make the Regulatory Flexibility Act (P.L. 96-354) apply to all rules and regulations issued by the IRS. The purpose of the act is to generate sensitivity to the administrative problems of small businesses by requiring that all federal agencies analyze the impact of proposed rules and regulations on small businesses. Additionally, the act requires that agencies examine alternatives and adopt the least burdensome approach to such rulemaking.

The IRS, however, has claimed to be exempt from these requirements on the grounds that its rules are merely "interpretive" in nature.

The IRS should be required to comply with the Regulatory Flexibility Act. The direct costs to taxpayers of IRS regulatory activity are immense and crippling to many small businesses. Small companies with limited resources often are forced to hire employees solely for the purpose of complying with federal record-keeping requirements. Unduly burdensome and incomprehensible regulatory requirements also have an adverse impact on taxpayer compliance, a cost ultimately borne by all taxpayers. We believe that the intent of the Regulatory Flexibility Act is well-founded and that the application of the act to the IRS is long overdue.

7) Burden of proof. Section 16 generally requires the IRS to carry the burden of proof in all administrative and judicial proceedings, even in noncriminal proceedings. We think that this proposal, as it is written, is unreasonably broad. A taxpayer is now required to keep sufficient records to support claims of income, deductions, losses, and tax liabilities. There are several long-standing rationales for placing the burden of proof on the taxpayer in civil proceedings. It is the taxpayer who has the best access to his or her own records, and it is the taxpayer who is in the best position to substantiate his or her own affairs.

To shift the burden of proof to the IRS is an unrealistic proposition that severely could impede its ability to administer and enforce the tax laws by discouraging complete and accurate record-keeping and by creating an

administratively infeasible burden. However, we would encourage investigation into whether there are some circumstances where the burden of proof would be borne more appropriately by the IRS.

CONCLUSION. The Chamber seeks protection for honest taxpayers. Yet, we are equally interested in supporting policies that encourage voluntary compliance and efficient tax collection procedures, because ultimately this benefits all taxpayers. The protection of taxpayer interests and the effective administration of tax laws need not be conflicting goals. Rather, both interests are compatible, provided that a proper balance is achieved between taxpayer and IRS interests. We think that the Omnibus Taxpayers' Bill of Rights Act redresses an imbalance that exists between the power of the IRS and the rights of small businesses and individuals.

On behalf of the U.S. Chamber of Commerce, Mr. Chairman, I commend you for the concern that you have shown on the important issue of taxpayer rights. We look forward to working with your Subcommittee in achieving our common goal of a more effective tax administration system.

Thank you.

Dated: May 21, 1987

TO: Senator Reid
United States Senate
Washington, D.C. 20510

FROM: Jim McCarthy
8913 Paddock Lane
Potomac, Maryland 20850

SUBJECT: Small Business & The IRS

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Thank you for your letter of May 12, 1987. I was grateful to have the opportunity to testify. At this time, in my opinion, the need to put some restraints on the IRS is every bit as important to our tax system as tax simplification itself.

I was formerly affiliated with a firm called "GBS" (General Business Services). GBS offers tax and recordkeeping assistance to small "micro" business through a national network of franchised business counselors. My law practice is now heavily involved in advising GBS business counselors and helping their clients.

Last Friday, I put on a training session for a small group of GBS business counselors in Delaware. We were scheduled to talk about "S. Corporations", but instead spent most of the three hours discussing your letter.

Our discussion centered on two parts. First, considering what are the primary causes of controversy between the IRS and small businesses and secondly, what specific areas require legislative and/or regulartory relief.

— General Problem Areas

Our discussion, covered three basic areas: the law - the computer - the people.

1. The Law

The law is too complex. Neither the IRS, the taxpayers nor their representatives can cope with it. The Congress seems to have bought the IRS contention that the national debt can be paid by dramatic increases in penalties - massive computer data cross

[illegible] [illegible] [illegible] [

The People

Most of the problems seem to center in the collection area.

When I was an IRS agent, I took my responsibility of "protecting the revenue" seriously. If there was a clear obligation, I proposed an assessment. I also, however, always gave taxpayers the benefit of the doubt. I resolved issues in the taxpayers favor when possible.

This is no longer the case. All taxpayers are assumed to be "deadbeats". There is an attitude of distrust and conflict.

I believe that the heart of the problem is in management. Managers seem to be under a "collect at any cost pressure." The emphasis is on statistics not people. Note the attached excerpt from Tax Hotline

Needed

General

1. The law - We cannot waive a magic wand and change our complex system overnight. But we can start. Congress must give more than lip service to the need for simplicity.

   Congress must stop giving the "policeman" all the tools he asks for. We should not try and solve the national debt with tax penalties and blackjack collection tactics.

2. The computer - The IRS must stop introducing new computer applications until thier existing capacity "catches up."

   When a taxpayer submits a reasonable response or explanation to a problem, a system should be provided whereby all other IRS activity involving that issue is put on "HOLD" until the explanation is reviewed.

   The IRS seems to run its books as a "double entry system". Often an IRS Problem Resolution Officer will note that a taxpayer's position seems to be clearly correct, but will be unable to facilitate the balancing entry. They need to be able to give preliminary or contingent relief from some form of a suspense account pending a formal conclusion.

3. The people - Hiring a new commissioner every few years and periodically sending IRS workers to "charm school" is not the answer.

We probably need to fire a few bureaucrats to get their attention and then introduce a new philosophy. We want IRS managers to be efficient and careful in how they spend our money, but statistics must be balanced with personal needs. Collecting taxes is a personal business - we need more "cops on the beat". Decentralization should be considered.

The American people who go overboard in protecting criminals with Miranda warnings and parolling criminals do not want a police state collection system that goes in the opposite direction.

4. The collection system -

a. penalties can often be excused with a showing of "reasonable cause". When a taxpayer is a "first offender" the law should place the burden on the IRS to prove willfulness.

b. We should clearly publish rules (which are now up to the whim of the collection officer) as to the availability of Payment Plans and Offers in Compromise.

5. At present, collection officers will often levy based on a computer listing generated by someone else with very little personal knowledge of the case. Serious inequities often result. The law should make the person making the levy personally responsible to determine that:

a. the taxpayer was properly served and

b. the taxpayer knows his rights and has had every opportunity to prove his case at the administrative level and

c. all other possible remedies, other than levy, have been explored.

6. The IRS is using "shotgun" approach in assessing 100 percent responsible corporate officer penalties. The assessment is made very quickly with no Statutory Notice (Tax Court Appeal). The jurisdiction of the Tax Court should be extended to include these cases or the appeals procedures simplified.

Other Areas

A. Luxury Autos - a small business person's auto is often his primary "plant and equipment". The existing $12,000 limit for depreciation purposes is far too low. The existing rules should be modified for American made vehicles. This is an issue I am working on for the Chamber's small business sub-committee.

B. Office-in-Home - new small businesses often start with an "ofice-in-home." The existing law unfairly places restrictions on deductions for depreciation, etc. on an office-in-home that would not apply to rent paid for an outside office.

C. The Cash Method - is denied a new business with any inventory whatsoever. Very often a serious financial burden results when the new business person must pay taxes on accounts receivable. The burden is especially serious where the business person has the U.S. Government or large corporations for customers. They both pay very slowly.

Almost all farms are allowed to use the cash method, while other small busineses are not. A consistent rule should be used for both. Any new business - farm or non-farm - should be allowed to use the cash method until the earliest of two thresholds - (4 years or gross income of $500,000). When the threshold is reached, a 3 year phase-in (conversion from cash to accrual) should be allowed.

D. Fiscal year-end conversions for partnerships and corporations will be required this year. Because of its desire to match KI's with 1040's, the IRS is increasing its own overworked computers and placing unnecessary burdens on accountants and taxpayers. A Small business exception is needed.

E. Payroll deposit perimeters should be increased and deposit requirements otherwise liberalized in quarterly payroll periods.

F. The new uniform capitalization rules - contain a small business exception that apparently does not extend to small manufacturers. If so, some statutory or regulatory relief is needed.

My short letter turned out to be quite an epistle. As you can see, I feel very strongly about the burden that existing tax policies place on small businesses. I applaud the efforts you are taking to facilitate relief and stand ready to help whenever I can.

Very truly yours,

Jim McCarthy

James D. McCarthy

STATEMENT OF GEORGE M. PARKER, MEMBER, NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS, ALEXANDRIA, VA

Mr. PARKER. Thank you, Mr. Chairman. My national organization is located in Alexandria. I have some abbreviated comments, but I would like to have my full statement in the record.

Senator PRYOR. We will have your full statement at the appropriate place in the record.

Mr. PARKER. Thank you, sir. It is a pleasure to testify today before the Senate Finance Committee's Subcommittee on Private Retirement Plans and IRS Oversight. My name is George Parker, and I am here to testify for the National Society of Public Accountants on section 4 of S. 604, Omnibus Taxpayers' Bill of Rights Act.

I am an independent accountant from Atlanta, Georgia and have been enrolled to practice before the IRS since 1974.

In addition to my accounting practice, I have had the privilege of serving on the IRS Commissioner's Advisory Group and have twice served as the President of the Georgia Association of Public Accountants. I am currently the Chairman of the National Society of Public Accountants Federal Taxation Committee and am here in that capacity.

In general, the services which I provide my clients are fairly typical of the other 20,000 independent accountants who are members of NSPA. NSPA members provide accounting, auditing, tax preparation, tax planning, financial planning, and management advisory services to more than four million individuals and small businesses.

The Omnibus Taxpayers 'Bill of Rights Act is designed to protect the basic rights of American taxpayers. The National Society of Public Accountants is particularly supportive of the language in Section 4 of the legislation regarding a representative holding a power of attorney.

Among other procedural safeguards, section 4 is designed to prohibit the IRS from utilizing a certain audit technique that is likely to be harmful to the fundamental rights of taxpayers. Under this audit procedure, IRS revenue agents and tax auditors are bypassing the duly authorized representatives of taxpayers and thus are directly conducting personal interviews of these taxpayers. This policy is being implemented by IRS personnel even though the taxpayer has granted a power of attorney to his or her representative to act on his or her behalf.

According to this new IRS audit procedure, the client himself is required to answer all questions that the IRS auditor deems appropriate. In this way, the representative is relegated to the status of a witness. With the client unlikely to be technically conversant with Federal tax law, the client's rights could be violated by an IRS employee should the tax professional be denied the right to fully represent his or her client. A power of attorney permits the representative to do that which the client expects of him, which means in essence that representatives step into the shoes of the taxpayer.

In contrast to this current IRS audit technique, section 4 of S. 604 would assure that IRS personnel respect the scope of authority provided under a power of attorney to his or her authorized repre-

sentative. The IRS cites section 7602 of the Tax Code as its authority for justification of conducting personal interviews with taxpayers, especially with respect to the interview stage itself.

The National Society does not believe that Section 7602 of the Tax Code is the proper authority for requiring the presence of the taxpayer at such an interview, as this Code section is generally drafted for circumstances in which there is a need to issue a summons.

It is the National Society's contention that the circumstances justifying the issuance of a summons in the course of an IRS examination exists only in situations of fraud or when the taxpayer or the taxpayer's authorized representative has unreasonably delayed or hindered an IRS examination itself. No matter how well intentioned this policy is, NSPA is concerned that the personal interview audit technique could result in many fishing expeditions into a taxpayer's background or records.

This new IRS audit procedure is not good for the tax compliance process, as it would only foster cynicism among American taxpayers toward the Federal tax collection agency.

Instead, a taxpayer should believe that he or she will be fairly treated by the IRS. Section 4 of S. 604 would assure that taxpayers do gain a sense that they will be treated fairly by the Federal Government.

Mr. Chairman and other members of the subcommittee, it has been a pleasure for the National Society of Public Accountants to be present today and to provide our views on this most important piece of legislation.

At this time, I would be pleased to answer any questions that you may have.

Senator PRYOR. Mr. Parker, we appreciate your coming today. We appreciate that very fine statement, and we also are very grateful to you for your offer to help in this process on the Taxpayers' Bill of Rights.

And as we attempt to make this very controversial legislation weave its way through the cycle of legislation, we will hope that you will give us your expert knowledge and advice in any technical aspects that we might seek. We are very, very grateful for your coming this morning.

[The prepared written statement of Mr. Parker and a letter to Senator Reid follow:]

SUBMITTED BY THE
NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

It is a pleasure to testify today before the Senate Finance Subcommittee on Oversight of the Internal Revenue Service. My name is George Parker and I am here to testify for the National Society of Public Accountants (NSPA) on Section 4 of S. 604, the Omnibus Taxpayers' Bill of Rights Act.

I am an independent accountant from Atlanta, Georgia and have been enrolled to practice before the IRS since 1974. In addition to my accounting practice, I have had the privilege of serving on the IRS Commissioner's Advisory Group and have twice served as the president of the Georgia Association of Public Accountants. I am currently the chairman of the National Society of Public Accountants' Federal Taxation Committee.

In general, the services which I provide my clients are fairly typical of the other 20,000 members of NSPA, who for the most part are sole practitioners or partners in moderately sized public accounting firms. NSPA members provide accounting, auditing, tax preparation, tax planning, financial planning and management advisory services to more than 4 million individuals and small businesses.

The Omnibus Taxpayers' Bill of Rights Act is designed to protect the basic rights of American taxpayers in conjunction with Internal Revenue Service administrative practices and procedures. The National Society applauds the objectives of the

legislation.

The National Society has been specifically invited to testify on Section 4 of the legislation, the provision which establishes certain procedural safeguards for taxpayer interviews.

Among other procedural safeguards, Section 4 generally requires the IRS (upon request of the taxpayer) to conduct taxpayer interviews at a reasonable time and place convenient to the taxpayer and to allow the taxpayer to make a recording of the interview. Moreover, the provision requires the IRS to inform taxpayers of their basic rights and of their right to the presence at the interview of an enrolled agent, attorney, certified public accountant, or enrolled actuary.

NSPA is particularly supportive of the language in Section 4 regarding a representative holding a power of attorney. The language states that, "Any person with a written power of attorney executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview... An officer or employee of the Internal Revenue Service shall treat such person as the taxpayer for purposes of such interview unless such officer or employee notifies the taxpayer that such person is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer."

This language of Section 4 is designed to prohibit the IRS from utilizing a certain audit technique that is likely to be

harmful to the fundamental rights of taxpayers. Under this audit procedure, IRS revenue agents and tax auditors are by-passing the duly authorized representatives of taxpayers and thus, are directly conducting personal interviews of these taxpayers. This policy is being implemented by IRS personnel even though the taxpayer has granted a power of attorney to his or her representative to act on his or her behalf.

An "interview" is the IRS term which means to question, audit, or orally examine taxpayers. Under this new IRS audit procedure, the client himself is required to answer all questions that the IRS auditor deems appropriate. In this way, the representative is relegated to the status of a "witness". With the client unlikely to be technically conversant with Federal tax law, the client's rights could be violated by an IRS employee should the tax professional be denied the right to fully represent his or her client.

Public announcement of this audit technique appeared in an IRS newsletter (dated March 1986) entitled, "Manhattan District News and Views". Since publication of the announcement, the audit procedure regarding the personal interviewing of taxpayers has now become standard policy in many district offices of the Internal Revenue Service. Indicative of this audit technique becoming a national policy for the IRS are Sections 4231.230 and 4252 of the Internal Revenue Manual.* Section 4231.230 discuss

* The Internal Revenue Service publishes in its Internal Revenue Manual, the internal procedures for IRS employees. While the Internal Revenue Manual does not have any statutory or regulatory authority under law, it does provide insight as to how IRS employees are to act in these matters.

the circumstances under which the taxpayer's presence may be required during the initial examination interview, even though an authorized representative might be present at the same time.

The National Society believes that this audit procedure is effectively a by-pass of the authorized representative's power of attorney. For this reason, NSPA is very supportive of Section 4 of the Omnibus Taxpayers' Bill of Rights Act, especially with respect to the general requirement that IRS officials cannot effectively by-pass the authorized representative's power of attorney unless the representative is responsible for unreasonable delay or hindrance of the IRS examination or investigation of the taxpayer.

Problems With IRS Taxpayer Interview Policy

Based on the IRS' current policy of taxpayer interviews, the National Society believes that the Service is showing a lack of appreciation for the authorized representative's scope of authority under a power of attorney. Moreover, this IRS policy is resulting in the infringement of the basic rights of the taxpayer as well.

Form 2848 is the "Power of Attorney and Declaration Representative" form which a taxpayer would fill out should he or she desire to have another individual (or individuals) represent him or her on tax matters before the IRS. Since Form 2848 is a general power of attorney, the taxpayer would be authorizing an enrolled agent, CPA, or attorney to perform any and all acts before the IRS that the taxpayer can perform. [See IRS regulation

Section 601.502(c).]

Section 4 of S. 604 would assure that IRS personnel respect the scope of authority provided under a power of attorney to his or her authorized representative. In particular, Section 4 would not permit the by-pass of taxpayer's representative in those situations where the IRS might otherwise want to conduct a personal interview of the taxpayer. A power of attorney permits the representative to do that which the client expects of him, which means in essence that the representative "steps into the shoes" of the taxpayer.

By relegating the taxpayer's authorized representative to the status of a "witness", this audit technique is inconsistent with the regulatory intent of Circular 230 (the regulations governing the practice of enrolled agents, CPAs and attorneys before the Internal Revenue Service). [See 31 CFR 10.]

The Internal Revenue Service does not view a "witness" as an advocate on behalf of the taxpayer with respect to representation of that taxpayer at conference, hearings and meetings. Moreover, Section 4055.3(1) of the Internal Revenue Manual provides IRS employees with guidelines as to when it might be advisable to excuse a witness from a conference, hearing or meeting.

Section 10.2(a) of Circular 230 defines practice before the IRS as comprehending "all matters connected with presentation to the Internal Revenue Service ... Such presentations include the preparation and filing of necessary documents, correspondence with, and communications to the Internal Revenue Service, and the

representation of a client at conferences, hearings and meetings."

Section 4 of S. 604 would assure that the taxpayer's authorized representative is not relegated to the role of a witness during an examination interview. The Omnibus Taxpayers' Bill of Rights Act would continue to maintain the authorized representative's ability (under a power of attorney from the taxpayer) to perform any and all acts that the taxpayer could perform on his or her own. In essence, S. 604 provides recognition and respect for the taxpayer's legitimate rights.

IRS Justification For IRS Interview Procedure

Under the Internal Revenue Manual Section 4231.230(8), the IRS cites its authority for interviewing the taxpayer himself, especially with respect to the initial interview stage itself. In particular, the IRS states that "Section 7602 of the Internal Revenue Code authorizes examiners to require taxpayer presence at the interview".

The National Society does not believe that Section 7602 of the Tax Code is the proper authority for requiring the presence of the taxpayer at such an interview, as this Code section is generally drafted for circumstances in which there is a need to issue a summons.

Section 7602(a) of the Tax Code provides that "Authority to Summon, Etc.-For the purpose of...determining the liability of any person for any internal revenue tax...the Secretary [of

Treasury] is authorized -

1. To examine any books, records, or other data which may be relevant or material to such inquiry:

2. To summon the person liable for tax...: and

3. To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry." (Emphasis added.)

NSPA does not believe that the initial interview stage of an IRS examination is comparable to circumstances under which a summons should or would be issued. We contend that the Internal Revenue Service is misconstruing Section 7602(a), as it would be extremely unlikely that the IRS would issue a summons or place the taxpayer under oath.

It is the National Society's contention that the circumstances justifying issuance of a summons in the course of an IRS examination, exist only in situations of fraud or when the taxpayer or the taxpayer's authorized representative have unreasonably delayed or hindered the IRS examination itself.

Section 4 of the Omnibus Taxpayers' Bill of Rights Act recognizes this point. Moreover, in addition to providing procedural safeguards for the taxpayer, S. 604 also provides procedural safeguards for the IRS as well. The proposal would permit a by-pass of the authorized representative's power of

attorney in those circumstances where the representative "is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer."

Should the Internal Revenue Service ultimately want or need to require the taxpayer to provide testimony or turn over certain books and records, the National Society recognizes that Section 7602 of tax code does provide the IRS with the authority to issue a summons to accomplish those objectives. Nevertheless, even with respect to a summons, a federal agency must meet certain procedural requirements before that summons can be issued.

In order to enforce an administrative summons, the IRS must meet the requirements of U.S. v Powell, 379 U.S. 48 (1964) and certain other court cases. These cases require the IRS (among other procedures) to show that the testimony or books or records sought by the agency are relevant to the investigation, that the information sought is not already within the Commissioner's possession, and that the agency is using the summons authority in a good faith pursuit of the Congressionally authorized purposes described in Section 7602. (See P.L. 97-248, 9-3-82, Conference Committee Report on the Tax Equity and Fiscal Responsibility Act of 1982 regarding limitation on use of administrative summons.)

Accordingly, the key policy questions with respect to the issuance of an administrative summons are relevancy to the investigation and the agency's good faith pursuit of carrying out the law.

The National Society is concerned that the IRS policy with respect to the personal interviewing of taxpayers, no matter how well intentioned, might unconsciously encourage IRS personnel to violate these principles of relevancy and good faith. Moreover, NSPA is concerned that the personal interview audit technique could result in many "fishing expeditions" into a taxpayer's background or records.

This situation is not good for the tax compliance process, as it would only foster cynicism among American taxpayers towards the federal tax collection agency. Instead, a taxpayer should believe that he or she will be fairly treated by the IRS. Section 4 of S. 604 would assure that taxpayers do gain a sense that they will be treated fairly by the Federal government. In essence, the legislation does much to protect the fundamental rights of the taxpaying public.

Mr. Chairman and other members of the Subcommittee, it has been a pleasure for the National Society of Public Accountants to be present today and to provide our views on this most important piece of legislation. At this time, I would be pleased to answer any questions that you may have.

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May 6, 1987

The Honorable Harry Reid
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

The National Society of Public Accountants is very pleased to provide answers to the questions that you have raised in your letter of April 19, 1987 and to provide additional comments on Section 4 of S. 604, the Omnibus Taxpayers' Bill of Rights Act.

Our comments to the questions you raised are attached for your consideration. We feel that Congressional action is needed to protect the rights of the millions of American taxpayers, and thus, we strongly support Section 4 of S. 604.

The Freedom of Information Act and the right of Congress to have the GAO conduct audits of the IRS are but two examples of laws that have greatly benefited American taxpayers. Section 4 of S. 604 would go a long way toward assuring that no American should have to feel "uncomfortable" in their dealings with the IRS.

Again, it has been our pleasure to be responsive in this matter. If we can be of any additional assistance, please don't hesitate to call me or Mr. Benson S. Goldstein of our National Office.

With best regards,

Sincerely,

George M. Parker

George M. Parker
Chairman
Federal Taxation Committee

Enclosures

Question 1

What do you believe is motivating the IRS to ignore its own internal rules and, in effect, outflank taxpayers' duly authorized representatives?

Response

We think you've asked a very important question and one that perhaps goes to the heart of the problem. The IRS has a very dificult mission to fulfill and will never be a "lovable" agency like "Smokey the Bear and the Forest Rangers", and some other agencies that come to mind. Nor will it be one that can command great feelings of patriotism such as a call to arms, and the mobilization of a nation in a time of war. However, the duty that the agency performs for the nation is immeasurable. The great achievements that our nation has made would not have been possible without the tax collection services of the Internal Revenue Service.

In an effort to fulfill the agency's mission, we feel that officials charged with the administration of the nation's tax laws sometimes fail to see the "forest for the trees." They become engrossed with their operational activities and lose track of their primary mission and the principles of tax administration which they have stated to be in the agency's governing policy.

The Internal Revenue Service publishes the Internal Revenue Bulletin (IRB) weekly and the Cumulative Bulletin (CB) semi-annually, which is a compilation of the IRB. The IRS states that the IRB is:

> "...the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest."

On page 2 of every IRB and CB is stated the IRS' Mission Statement and Principles of Tax Administration. We have included a copy of these two statements as Exhibits 1 and 2. An examination of these two pronouncements will show that the Agency's desire to directly interview the taxpayer is inconsistent with both of these statements.

* * *

Question 2

As in most agencies, the IRS has its hierarchy of rules. First come the laws, then regulations and then the Internal Revenue Manual. Your testimony seems to indicate the IRS has stood this hierarchy on its head in this case. Would you say in your experience this is generally true?

Response

There certainly seems to be a great deal of inconsistency between what is said in the law, rules and regulations, other documents, and what the IRS seeks to apply in its new audit technique on taxpayer interviews, as announced in the Internal Revenue Manual (IRM). We have attached a copy of this policy statement (IRM 4231.230 and 4252) as Exhibits 3 and 4.

Some examples of this inconsistency are:

Relevant Document	Inconsistency
Law	
* 5 USC Sec 500 (b)and (c) Concerning Administrative Practice before Federal agencies. (The Agency Practice Act) Both sections state that a qualified individual: ". . . may represent a person . . ."	IRM 4231.230 and 4252 seem to be inconsistent with the statutory intent of the law since the representative would be "by-passed" at the initial interview stage.
* 31 USC Sec 330 (a)(1) Concerning the regulating of practice of representatives and the establishment of enrolled representatives: states: ". . . the Secretary of the Treasury may (1) regulate the practice of representatives of persons . . .	Again, same as above.
Regulations	
* 31 CFR Sec 10 et seq Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries before the Internal Revenue Service. This is also published as Treasury Department Circular 230 and is available to the public upon request. Sec 10.2 (a)"Practice before the Internal Revenue Service" comprehends all matters connected with presentation to the Internal Rev-	

(continued)

Question 2
Page 2

Relevant Document	Inconsistency
enue Service or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include the preparation and filing of necessary documents, correspondence with and communications to the Internal Revenue Service, and the representation of a client at conferences, hearings, and meetings."	Again, same as above
* 26 CFR Sec 601.502 (b) (1) Conference and Practice Requirements. This is also published as IRS Publication 216 and is available to the public on request.	
"(b) Requirements to be met by taxpayer's representative in order to be recognized - (1) Explanation of recognition to practice. Except as otherwise provided in this section, no person may appear in a representative capacity on behalf of any taxpayer or of a transferee or fiduciary unless such person presents satisfactory identification and is recognized to practice before the Internal Revenue Service. A person will be recognized to practice if he or she meets the requirements set forth in Treasury Department Circular 230, as amended (31 CFR Part 10) (hereinafter referred to in this subpart as Circular 230), . . . "	Again, same as above
Other Documents	
* Mission of the Service (See Exhibit 1)	Again, same as above
Statement of Principles of Internal Revenue Tax Administration (See Exhibit 2)	Again, same as above

Question 2
Page 3

Relevant Document	Inconsistency
* Publication 556 Examination of Returns, Appeal Rights, and Claims for Refund. (We note that the Internal Revenue Service included this publication in their testimony on April 21, 1987.) Pg 1, 2nd column, If Your Return Is Examined "Whatever method of examination is used, you may act on your own behalf or you may have someone represent you or accompany you. If you filed a joint return, either you or your spouse, or both, may meet with us. An attorney, a certified public accountant, a person enrolled to practice before the Internal Revenue Service, or the person who prepared the return may represent or accompany you."	Again, same as above.
* Publication 5, Appeal Rights and Preparation of Protests for Unagreed Cases. (We note that the Internal Revenue Service included this publication in their testimony on April 21, 1987.) Pg 1, 3rd column, Representation "You may represent yourself before Appeals, or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service."	Again, same as above

Question 2
Page 4

Relevant Document	Inconsistency
* Publication 586A, The Collection Process (Income Tax Accounts) (We note that the Internal Revenue Service included this publication in their testimony on April 21, 1987.)	
Page 6, Taxpayer Rights	
"Representation. You may represent yourself or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service.	Again, same as above
* Publication 594, The Collection Process (Employment Tax Accounts) (We note that the Internal Revenue Service included this publication in their testimony on April 21, 1987.)	
Page 7, Taxpayer Rights	
"Representation. You may represent yourself or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service.	Again, same as above
Internal Revenue Manual (IRM)	
* IRM 4055.21 (2) and (4) (Concerns Recognition Requirements of representatives.) (Stated at Exhibit 5 and 6)	
"(2) If taxpayers representative is recognized in accordance with 26 CFR 601.502(b), he/she should be accorded all due rights and privileges in the representation of his/her client. . . . "	We fully agree with this statement. This statement seems to fully endorse what the law, the regulations, and the Internal Revenue Service's own publications are saying.

Question 2
Page 5

Relevant Document	Inconsistency
(continued)	
"(4) A qualified representative's rights and privileges include the right to be present whenever his/her client is interviewed, interrogated, or requested to furnish information to the Service. This right should be respected by Service personnel at all times. In most instances this will mean that arrangements for the direct examination or investigation of the taxpayer are conducted through his/her representative. A representative may, of course, waive this right as is frequently done during the civil examination of a client's books and records. However, such a waiver is not to be presumed but must be specific in each case. If orally given by the representative, it should be clearly noted in the case file.	This seems to be specific enough, and is consistent with the statutory intent and the regulations, and the various publications issued thereunder. It is also consistent with IRM 4055.21 (2) above. This IRM provision will now be in conflict with the newly issued IRM 4231.230 and 4252.
IRM 4231.230 * (Concerns Initial Interviews) (See Exhibit 3)	
"(4) Remember, the taxpayer is being examined and not just the return. . . ."	We feel that this statement needs clarification. The taxpayer's Federal tax affairs are being examined. Since this statement implies that a full civil investigation of the client's tax affairs are under way, it enhances the importance of full representation at this level.
"(6) On these examinations, if a joint return was filed, the spouse(s) who conducted the business, incurred the expenses, or maintained the books and records, should be requested to be present and participate a the initial interview. An authorized representative may be present and participate at the interview, but the taxpayer is expected to answer questions the examiner specifically indicates."	Now we are removing the right of the client to be fully represented at the initial interview and have relegated the representative to the status of a "witness" by the Internal Revenue Service's own definition. See the Chart Exhibit 4650-1 at Exhibit 6. This provision is now in conflict with other IRM provisions as stated above. Additionally, it is in conflict with itself at (8) second sentence. (See below.)

Question 2
Page 6

Relevant Document	Inconsistency
IRM 4231.230 (continued)	
"(8) Section 7602 of the Internal Revenue Code authorizes examiners to require taxpayer presence at the interview. However, examiners should be cautioned not to by-pass authorized representatives unless permission is granted."	The first sentence concerning Section 7602 is a strained interpretation of the Internal Revenue Code. Section 7602 authorizes examiners to issue a summons. According to the Statutory intent of Section 7602, the Regulatory intent, and to the IRM procedural guidance it appears that the summons power is to be used when it is deemed necessary and other methods have not proven satisfactory. Accordingly, we feel that this is a misinterpretation of the Code. The second sentence, which we feel is correct, makes its application inconsistent with (6) above, and (8) first sentence.
* IRM 4252 (concerning Examination Techniques) (See Exhibit 4)	
"(3)(b) Direct contact with the taxpayer is also needed on some other types of examinations. The taxpayer(s) should be present at the initial interview, even if an authorized representative is present. Proper development of some examinations necessitiates questioning the taxpayer who has personal knowledge of relevant facts. If it is not possible for the taxpayer to be present at the interview, a telephone contact should be made to solicit this information. . . ."	Implementation of this technique, which the IRS is doing, would seem to be in conflict with the law, the regulations, and their own publications.
"(5)(a) In connection with some office interview examinations, it may be advantageous or useful to make a "visual inspection" of a taxpayer's place of business or personal residence. Such an inspection will give a tax auditor some indication of the size and nature of the business based on location, approximate investment in	Since this technique is indicative of a full civil investigation of the taxpayer, it more fully documents the need for full taxpayer representation at the initial interview.

(continued)

Question 2
Page 7

Relevant Document	Inconsistency
(IRM 4252 (5)(a) continued)	
the business, likely volume of business activity, etc., and thereby provide a basis for inquiries when the taxpayer appears for an office interview examination.	(see comment above)
(b) In making visual inspections, tax auditors should be careful not to infringe upon the rights and privacy of taxpayers. Also, photographs of the taxpayer's place of business or residence should not be taken.	Whether or not there is a violation of a taxpayers rights, and privacy rights remains the subject of a different question. It certainly seems like they have given approval to what borders on being a surveilance technique.

I have personally experienced this desregard for taxpayers' rights, as employed by the IRS in Georgia on more than one occasion. Moreover, I have had colleagues from Georgia and across the nation tell me that they have also experienced this disregard for taxpayers' rights by the IRS. Just recently, I received a letter from a colleague in the mid-west where the taxpayer's representative was not only ignored, but the IRS examiner made a personal inspection of the taxpayer's residence by actively going through the house, including bedrooms. The audit was closed without incident but the purpose of the intrusion escapes both myself and my colleague.

* * *

Question 3

As a former member of the IRS Commissioner's Advisory Group, you have great insight as to how policy is made within the IRS. How are changes in the manual made and what requirement is exists for public comment on proposed changes?

Response

You have touched on a very important question. The Internal Revenue Manual sets out the policies, procedures, instructions and guidelines relating to operations of the Internal Revenue Service and what the IRS expects its employees to follow. The IRM is classified as an "internal" document. As such, the public is not accorded an opportunity to comment on its content.

To the extent that the IRM (or the "internal" manual of any agency for that matter) concerns itself with strictly internal administrative matters, I don't know that the public would necessarily have a need or a right to comment on its provisions. However, to the extent that an agency's "internal manual" affects the public, perhaps the public should have a right to comment since its application, and the interpretation of the law, directly impacts upon the public.

Although the Internal Revenue Manual is now available to the public, such was not always the case. In fact, it came about as a result of passage of the Freedom of Information Act in 1966. Even after passage of the Act, it was not until well into the 1970's, as a result of judicial decisions, that release of this document was made. Although the IRM is available commercially from Commerce Clearing House, if you want to obtain the document from the IRS it is still classified as a Freedom of Information Document. That is, you must go through some very special "red tape" in order to obtain it from the IRS.

In summary, Congressional action is needed in order for the public to gain access to a document that affects their lives. Prior to the release of the IRM to the public, the taxpayer was in a "catch 22" situation. If he asked what was the authority of a certain IRS employee to invoke a certain tax procedure, the taxpayer was informed that it was set-forth in the Internal Revenue Manual. If he asked to see the manual he was informed that the Manual was not available to the public.

* * *

EXHIBIT 1

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenues at the least cost to the public, and in a manner that warrants the highest degree of public confidence in our integrity, efficiency and fairness. To achieve that purpose, we will

—Encourage and achieve the highest possible degree of voluntary compliance in accordance with the tax law and regulations.

—Advise the public of their rights and responsibilities.

—Determine the extent of compliance and the causes of noncompliance.

—Do all things needed for the proper administration and enforcement of the tax laws.

—Continually search for and implement new, more efficient and effective ways of accomplishing our Mission.

EXHIBIT 2

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress, to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them, and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

(7) There are differences between net income for general accounting purposes and taxable income for Federal income tax purposes. However, such differences become insignificant when compared with the vast number of transactions which are treated identically for both purposes. It should not be forgotten that the determination of taxable income and the resultant tax liability is contingent upon the net income determined for general accounting purposes.

230 (11-2-66) 4231
Initial Interview

(1) The initial interview is the most important part of the examination process. The first few minutes should be spent making the taxpayer comfortable and explaining the examination process and appeal rights. This would also be a good time to ask the taxpayer if he/she has any questions.

(2) Sufficient information should be developed to reach informed judgments as to:

(a) financial history and standard of living;

(b) the nature of employment to determine relationship with other entities and the existence of expense allowances, etc.; this could include the exchange of merchandise or services (bartering);

(c) any money or property received which was determined to be tax exempt and/or nontaxable income; and

(d) the potential for moonlighting income.

(3) If warranted by issues on the return or responses to previous questions, the following information should be developed:

(a) the real and personal property owned, including bank accounts, stocks and bonds, real estate, automobiles, etc., in this country and abroad.

(b) any purchases, sales, transfers, contributions or exchanges of personal assets during the period; and

(c) the correctness of exemptions and dependents claimed.

(4) Remember, the taxpayer is being examined and not just the return. Therefore, develop all information to the fullest extent possible. If the appearance of the return and response to initial questions lead the examiner to believe that indirect methods to determine income may be necessary, the factors in Chapter 500 should also be covered at this time.

(5) In Office Examination, the taxpayer's presence may be necessary at the initial interview, even if an authorized representative is present. Some examinations require information only the taxpayer would have. These include the examination of returns with:

(a) expenses in excess of reported income;

(b) gross receipts classified on a Schedule C or F;

(c) indications of possible additional income, and

(d) indications of fraud.

(6) On these examinations, if a joint return was filed, the spouse(s) who conducted the business, incurred the expenses, or maintained the books and records, should be requested to appear at the initial interview. An authorized representative may be present and participate at the interview, but the taxpayer is expected to answer questions the examiner specifically indicates.

(7) If a representative is present at the initial interview and it is not possible for the taxpayer to appear, the interview should include a telephone call to the taxpayer to secure his/her personal knowledge applicable to the return.

(8) Section 7602 of the Internal Revenue Code authorizes examiners to require taxpayer presence at the interview. However, examiners should be cautioned not to by-pass authorized representatives unless permission is granted.

[The next page is 7239-23.]

Information Charles 7

EXHIBIT 5
Page 1 of 2 Pages

course, more than offset the processing costs to warrant issuing such a letter.

(e) Previous ineligibility determinations may be revoked or withdrawn at any time by the issuing district based upon newly discovered evidence or upon an understanding that the conduct complained of will be discontinued. The Assistant Commissioner (Examination), and other offices concerned should be promptly notified.

(f) The provision in Rev. Proc. 81-38 specifying that requests for reinstatement may be filed after one year following the notice of final determination is not intended to limit the period in which a District Director may act in appropriate circumstances. Its only purpose is to curtail early nuisance type requests from preparers.

(g) Copies of final ineligibility determination letters involving return preparers who may be appearing for limited practice in contiguous districts should be submitted to the Assistant Regional Commissioner (Examination) with a statement regarding the known scope of the preparer's practice. The regional office will then advise other districts and regions, as appropriate.

(h) A district's ineligibility determinations are binding upon all Service personnel who have notice thereof. This is handled on a district basis since most return preparers practice locally. A nationwide list of ineligible return preparers would be long and cumbersome and subject to rapid and frequent changes.

(i) Each local licensee, or franchise holder, of an areawide or nationwide organization that advertises extensively for tax return preparation work should be considered separately with respect to violations. Some of these organizations do not want a licensee, or his/her employees, to appear as an advocate for the taxpayer client; rather they want him/her to appear only as a witness to explain the books, records and returns to the examiner under Rev. Proc. 68-29. In such cases, it is not necessary to declare licensees ineligible for limited practice if they do not seek to be an advocate.

(j) Each District Director will maintain an up-to-date list of unenrolled persons ineligible to represent taxpayers in his/her district. This should include final ineligibility determination letters issued locally, those of contiguous districts, and special instructions issued regarding cases pending. Examiners should be cautioned that as long as an unenrolled preparer's name appears on the list of ineligibles, he/she is not permitted to appear before them as an advocate, with or without the taxpayer, but only as a witness for the taxpayer under Rev. Proc. 68-29.

(k) A copy of each final determination of ineligibility issued by the District Director will be forwarded to the Assistant Commissioner (Examination), (OP:EX:E:S), 1111 Constitution Avenue NW, Washington, DC 20224, together with copies of the notice of proposed determination of ineligibility, the unenrolled preparer's reply, if one is filed, and any other related papers or documents, as required in section 10.02 of Rev. Proc. 81-38.

(l) Unenrolled preparers determined ineligible by the District Director may appeal to the Assistant Commissioner (Examination), (OP:EX:E:S), 1111 Constitution Avenue, NW, Washington, DC 20224. Determinations and special orders issued by the Assistant Commissioner (Examination), as a result of such appeals are final. The District Director has jurisdiction to consider subsequent requests for reinstatement.

4054 (7-29-83)
Special Enrollment Examination

Responsibility for the Enrollment and Practice Program has been transferred to the Assistant Commissioner (Human Resources), Office of Director of Practice. Instructions for administering the Special Enrollment Examination are in IRM 1(10)20.

4055 (8-8-78)
Recognition Guidelines

4055.1 (8-8-78)
Introduction

These guidelines are to assist Service personnel in applying rules and regulations that must be observed in dealing with persons appearing for others in tax matters. (See IRM 4051.) They are not all inclusive, nor a substitute for reference to applicable rules and regulations; rather they are general principles and interpretations made regarding questions that have arisen. The chart of Recognition and Authorization Requirements for Persons Appearing Before the Service, Exhibit 4050-1, is a ready reference of general recognition rules and requirements.

4055.2 (6-8-76)
Recognition Requirements

4055.21 (5-13-82)
General

(1) When dealing with a person other than the taxpayer, the examiner has two things to bear in mind: that Service personnel are prohibited (IRC 7213) from disclosing tax information of a confidential nature to unauthorized persons; and that practice before the Service is restricted to properly qualified persons under provisions of Circular No. 230.

(2) If taxpayer's representative is recognized in accordance with the provisions of 26 CFR 601.502(b), he/she should be accorded all due rights and privileges in the representation of his/her client. See also IRM 4055.5, Qualification for Practice.

(3) 26 CFR 601.502(c) sets forth the requirements of a power of attorney or a tax information authorization. Form 2848, Power of Attorney and Declaration of Representative, or a similar privately designed form is required when a taxpayer wants his/her representative to have the authority to perform any and all acts that the taxpayer can perform, excluding the power to receive refund checks and the power to sign the returns. When a taxpayer wants his/her representative to have authority only to receive confidential information and to make written or oral presentations of fact or argument on the taxpayer's behalf, the taxpayer should use Form 2848-D, Tax Information Authorization and Declaration of Representative, or a similar privately designed form.

(4) A qualified representative's rights and privileges include the right to be present whenever his/her client is interviewed, interrogated, or requested to furnish information to the Service. This right should be respected by Service personnel at all times. In most instances, this will mean that arrangements for the direct examination or investigation of the taxpayer are conducted through his/her representative. A representative may, of course, waive this right as is frequently done during the civil examination of a client's books and records. However, such a waiver is not to be presumed but must be specific in each case. If orally given by the representative, it should be clearly noted in the case file.

4055.22 (4-2-79)
By-Pass of Taxpayer's Representative

(1) When a recognized representative has unreasonably delayed or hindered an examination by failing to furnish, after repeated requests, nonprivileged information, the examiner may report the situation, through channels, to his/her division chief and request permission to contact the taxpayer directly for such information. The Chief, Examination Division, or District Director in streamlined district will carefully consider the situation and make a determination as to whether such permission should be granted. If such permission is granted, the case file will be documented with sufficient facts to show how the examination or investigation was being delayed or hindered and written notice of such permission, briefly stating the reasons why it was granted, will be given to the representative and the taxpayer. The written notice will be provided by the chief granting the permission to by-pass the representative.

(2) Permission to by-pass the representative and to contact the taxpayer directly as provided in (1) above does not constitute suspension or disbarment of the practitioner; and he/she may continue to represent his/her client if he/she makes an appearance. Further, he/she will be afforded the courtesy of being advised regarding the time and place of future appointments with the taxpayer.

(3) The unreasonable delay or hindrance of an examination or investigation by a recognized representative which results in permission being granted to by-pass the representative under (1) above, may also be referred to the Director of Practice for possible disciplinary proceedings under section 10.23 of Circular No. 230 if the District Director deems it advisable. The two separate provisions in the regulation, although similar, are not intended to be either mutually inclusive or exclusive. The provision in the Conference and Practice Requirements is intended only to enable the Service to expedite a particular examination or investigation. The provision in Circular No. 230 is intended as a duty or restriction relating to practice before the Service; and violations by attorneys, certified public accountants and enrolled agents are subject to disciplinary action. See IRM 4053 for reporting of conduct or practice violations by practitioners.

Exhibit 4050-1

Recognition and Authorization Requirements

Recognition and Authorization Requirements for Persons Appearing Before The Service

Capacity of Person Appearing (Each category includes all categories listed below it)	Attorneys and CPA's	Enrolled Agents	Unenrolled Persons who are not Attorneys or CPA's: Qualified for Limited Practice Under Sec. 10.7 of Cir. No. 230 — Return Preparers	Unenrolled Persons who are not Attorneys or CPA's: Qualified for Limited Practice Under Sec. 10.7 of Cir. No. 230 — Others	Unenrolled Persons who are not Attorneys or CPA's: All Others
1. As an advocate who is to perform certain acts for taxpayer as prescribed in 26 CFR 601.502(c)(1) (Constitutes "Practice" as defined in Cir. No. 230)	P/A and D Exception (2) may apply	P/A and F	Ineligible	P/A Exception (2) may apply	Ineligible
2. As an advocate (Constitutes "Practice" as defined in Cir. No. 230) who may receive tax information of a confidential nature but is not to perform other acts for taxpayer as prescribed in 26 CFR 601.502(c)(1).	TIA and D Exception (1), (2) or (3) may apply	TIA and F Exception (3) may apply	TIA Exception (4) applies	TIA Exception (2) or (3) may apply	Ineligible
3. As a witness who may receive or inspect tax information of a confidential nature (Does not include "Practice" as defined in Cir. No. 230)	TIA Exception (1) or (2) may apply	TIA	TIA	TIA Exception (2) may apply	TIA
4. As a witness for taxpayer to present his books, records or returns to the examining officer (Does not include "Practice" as defined in Cir. No. 230)	No requirements	No requirements	No requirements	No requirements	No requirements

CODE FOR REQUIREMENTS

P/A—Must present or have Power of Attorney on file
TIA—Must present or have a Tax Information Authorization (or Power of Attorney) on file if taxpayer is not also present
D—Must present or have a Declaration on file. Declaration may be in combination with a TIA or Power of Attorney
E—Must present evidence of current enrolled status or temporary recognition status.

EXCEPTIONS

(1) An attorney who prepared the estate tax return and is the attorney of record for the estate will not be required to have a TIA on file, but a Declaration must be on file. (26 CFR 601.502(c)(3)(iii))
(2) A trustee, receiver, or an attorney (designated to represent a trustee, receiver or debtor in possession) may substitute a proper court certificate or a copy of a district court order approving bond in lieu of a P/A or TIA. (26 CFR 601.502(c)(3)(iii))
(3) A TIA is not required if the advocacy can be performed without necessitating Service disclosure of tax information of a confidential nature. (26 CFR 601.502(c))
(4) Unenrolled return preparers are limited to representation of persons during the examination process (ineligible for practice at District or Appellate Conferences). (Sec. 10.7(a)(7), Cir. No. 230)

Senator PRYOR. I have a question for Mr. Wade. In fact, I have several questions for Mr. Wade; but I do believe because of the time situation, that I will submit most of these questions, Mr. Wade.

But I have one question I think I would like to ask. You have been with the IRS. You have written books about the IRS. You have advised taxpayers on dealing with the IRS. So, here we have a 17 section piece of legislation on the Taxpayers' Bill of Rights. Do you believe the Internal Revenue Service will endorse the Taxpayers' Bill of Rights and help us pass it?

Mr. WADE. I am not so sure. I was working on this in 1983 and 1984 under Senator Grassley's bill, and they came out violently opposed to a number of provisions. There are probably some provisions in the bill that they are going to oppose and probably could be dropped; but there are several provisions in the bill which I think are very important—extremely important—to taxpayers' rights, and I think that it would be a mistake if they tried to oppose them.

Senator PRYOR. I think really that the Internal Revenue Service has an opportunity with a piece of legislation like this; and I am not saying that this legislation is perfect, or that all 17 sections should be passed in one block.

We are going to try that. I am realistic enough to believe that the perception of the Internal Revenue Service is so maimed and scarred and whatever you might say—that the reputation is so bad—that this might be a way that they might be able to help make people believe that they are for the equal distribution of justice and certainly the protection of the taxpayer.

Mr. WADE. Exactly. If they were smart, they would jump on it as an opportunity to help improve their image. The last Commissioner was concerned about the mission statement; so his great contribution was rewriting the mission statement.

I think that one of the major problems is that people in the national office just don't have any idea of the things that go on in the field. And sometimes I wonder if they really care. Even in the national office, I never saw much concern about the way things were done in the field.

They feel that if they put a policy statement out and if there is a regulation and a prohibition against certain activity, then that should be sufficient. The only thing is that there is no way to monitor that. There is no way that the national office is monitoring how well the field is implementing their policies.

For example, Mr. Smith talked about the no-equity seizures, and that came about because the Administrative Conference Report in 1976 had jumped on the IRS about that. So, they prohibited that; but yet, there were a number of group managers all over the country who were telling revenue officers to do it anyway. It is surprising that somebody would be dumb enough to put it in writing because most of these things are handed down verbally. And there are a lot of verbal instructions that are passed down from higher management officials down to lower management officials, and even revenue officers if they try to document it.

To give you an appropriate example, one of the revenue officers at Bailey's Crossroads was given instructions by the branch chief to

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make a no equity seizure. So, he wrote it in his history sheet, that he was directed by the branch chief to make this no equity seizure; and he was reprimanded for making an unauthorized history notation in his history sheet. So, you can't win.

And there is a mindset, like Senator Grassley talked about, a certain mindset in terms of seizures. And it is almost like football, where winning points is the way to win; and making seizures is the way to win in the IRS and it is just real foolhardy. And this seems to be the only way they can measure effectiveness and performance. And I truly believe that there are other ways, but nobody seems to want to take the time to look into these other ways.

Senator PRYOR. Thank you, Mr. Wade. Once again, I will submit some additional questions that we would like on the record, and you will be getting those very soon.

We are very indebted to you.

Senator PRYOR. Mr. McCarthy, I would like to make this request of you. I really don't think I have a question, but I have a request, if I might; and that is if you could help us find some specific situations and instances—say in the last three to four years—that relate to seizures in small businesses.

We know they are out there, and we are trying to find some of those; and we are trying to gear our legislation in the seizure area in the Taxpayers 'Bill of Rights to try to prevent some of that from happening in the future. Once again, we all want people to pay their taxes; we are not against that. We know that is the price that we must pay to live in this society; but we do think that there have been some cases of levies, seizures, etcetera, especially against small businesses; and we would like those put on the record.

Mr. MCCARTHY. Just ask how many you want, sir, and we will be happy to provide them.

Senator PRYOR. Thank you very much.

Senator PRYOR. And Mr. Parker, once again, we thank you also for appearing; and I am going to ask Senator Reid if he has any final questions.

Senator REID. Mr. Chairman, this is a great day for me. This is the first time the Chamber of Commerce and I have been on the same side. (Laughter)

Senator PRYOR. You know, I have a feeling, Senator Reid, that this is one of those issues where even the U.S. Chamber of Commerce and the AFL-CIO might see eye to eye.

Senator REID. Seriously, Mr. McCarthy, your testimony was excellent. You certainly project the experience and knowledge that you have, and you approached it in a very fine way. I was educated by your testimony, and I appreciate that very much.

Mr. Wade, I have some questions I am going to submit in writing to you and Mr. McCarthy. Mr. Wade, I also appreciate very much your testimony. Your testimony, on top of that of Mr. Smith, indicates to me that the people who are complaining about some of the actions of the IRS aren't people who don't know what they are doing, people who have no experience in business or in life in general and certainly experience in the tax area. The two of you together have a lot of experience. If you put that with Mr.

McCarthy's and Mr. Parker's, then we are talking about scores of years of experience dealing with the tax laws of this country. And I compliment and applaud you for the testimony that you gave here today. Mr. Parker, you and the National Society of Public Accountants are to be congratulated for taking your time. I know you do not live here; you are from Georgia, coming all this way to testify. I appreciate it very much.

Mr. Chairman, I have questions to submit to all of these witnesses; but again, I have to take this minute to tell you what a great job the staff has done, putting together these witnesses. As you can see from the bundle of papers that I have gathered in just a few months on this issue, it is difficult to find and narrow down the scope of how this hearing would take place. And the staff did an outstanding job and I again—for about the fifth time—must tell you how much I appreciate your holding this hearing.

I couldn't even get one in the House; so this is great that you held this hearing. Thank you very much.

Senator PRYOR. Senator Reid, your staff is doing an exemplary job, and I think there is another aspect to the staff work that we have had on this legislation. This was not just a Democratic staff or a Republican staff; this was a staff that represented a cross section of Senators and Congressmen, across party lines, party philosophies, and it is an absolutely great and bipartisan effort, in trying to come to grips with the serious problem that I think one of our witnesses stated has become sort of a cancer in our system, and we are trying to operate on that cancer right now. We are trying to correct it before it gets worse.

Once again, as I stated in my opening statement, this is not a hearing to "bash" the Internal Revenue Service. There have been some strong accusations here. Most of the employees of the Internal Revenue Service are fine people, are fine members of our respective communities; but we do think something is happening to the Internal Revenue Service we don't like and we don't know why it is happening.

And we want to correct it, as I said before, before this situation becomes worse and before it completely erodes the public confidence of our tax system.

So, with that said, and once again with gratitude and thanks to the witnesses, who today have come from a long way across this country to testify, we will now be looking forward to our April 21st hearing, Senator Reid, when the Internal Revenue Service comes before us and states its position, and maybe how it might feel about the Taxpayers' Bill of Rights, and answer some of the allegations that have been raised this morning in what we consider a very constructive hearing.

With that, the committee is adjourned, and we are very, very grateful.

[Whereupon, at 11:42 a.m., the hearing was concluded.]

TAXPAYERS' BILL OF RIGHTS

TUESDAY, APRIL 21, 1987

U.S. SENATE, SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE, COMMITTEE ON FINANCE,

Washington, DC.

The committee was convened, pursuant to notice, at 10:03 a.m. in room SD-215, Dirksen Senate Office Building, the Honorable David Pryor (chairman) presiding.

Present: Senators Pryor, Bentsen, and Heinz.

Also present: Senators Grassley and Reid.

[The press release announcing the hearing follows:]

PR- #H-41

PRESS RELEASE

FOR IMMEDIATE RELEASE
APRIL 14, 1987

UNITED STATES SENATE
COMMITTEE ON FINANCE
SD-205 Dirksen Senate Bldg.
Washington, D.C. 20510

FINANCE SUBCOMMITTEE ON IRS OVERSIGHT ANNOUNCES DATE OF SECOND HEARING ON TAXPAYERS' BILL OF RIGHTS

Washington, D.C. -- Senator David Pryor (D. Arkansas), Chairman of the Finance Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service, announced today that the second of two hearings on a proposed Taxpayer's Bill of Rights, at which only representatives of the Internal Revenue Service will testify, will take place on Tuesday, April 21, 1987, beginning at 10:00 a.m.

Senator PRYOR. The committee will come to order at this time. We are very pleased to have joining us this morning the Chairman of the Senate Finance Committee, Senator Lloyd Bentsen of Texas. Senator Bentsen, we are very honored that you would attend this subcommittee this morning.

We have also asked our friend, Senator Grassley of Iowa, a former member of this committee, who is also one of the original co-sponsors of the Taxpayers' Bill of Rights, to join us at this morning's hearing.

Mr. Commissioner, we would like to thank you, sir, for coming here to discuss the Taxpayers' Bill of Rights. On April 10, we held our first hearing on the Taxpayers' Bill of Rights. At that time, we had, I believe, four co-sponsors; today, we have, I believe, about 14 co-sponsors in the Senate. They come from both sides of the aisle.

My guess is that the IRS is not here to necessarily endorse the Taxpayers' Bill of Rights, but I do hope that you have come here to discuss, as we have in good faith—the Congress and the IRS—and what we can do together to safeguard the taxpayers' rights.

During the April 10 hearing, we heard from various taxpayers, retired IRS employees, and representatives of associations who support this legislation. I understand that, because of taxpayer privacy laws, you are unable to discuss the specifics of any one case. We understand this.

Hopefully, though, you will be able to respond to some of the general allegations raised at the April 10th hearing.

Let me begin by saying that the majority of IRS employees, I think, do a fine job under very difficult circumstances. I truly believe this. No one loves the tax collector, especially when he calls to say that you owe more taxes. I believe that a majority of the time IRS employees perform their jobs with the highest degree of professionalism.

Unfortunately, the present rules governing auditing and collection procedures allow, and sometimes encourage, individuals to act outside the Constitutional protections afforded to all American citizens. As you know, Mr. Commissioner, on April 10th this subcommittee heard testimony concerning instances when the IRS overstepped the bounds of both the IRS internal rules and, I would hazard to say, the United States Constitution.

Granted, it is hard to draw conclusions based merely on the testimony of a few witnesses. However, since the April 10th hearing, I have received hundreds of letters from all 50 States and telephone calls from around the country, many with stories of IRS abuse and mismanagement.

In fact, in our office we are still opening letters. We do not have all of those letters opened. Here is one box, and here are some 400 letters that we received only last week from taxpayers across America, citing abusive action by the Internal Revenue Service. Now, I must say that a lot of these letters might be from taxpayers who just don't like to pay taxes; and we know that there are some like that. However, I think in most instances, in reading some of these letters yesterday afternoon and last evening, I came to a conclusion that most of the taxpayers of our country are willing to pay taxes, and that they are objecting to the many instances of abusive tactics of IRS employees.

We also heard at that particular hearing, Mr. Commissioner, from former IRS employees about the unofficial seizure quota system within some regional offices of the IRS; and this has created, I fear, a bounty hunter mentality that seems to go beyond mere concern for collecting revenues for the Treasury.

It becomes a game to see which offices can make the most seizures or collect the most money. The prize is promotion. I do not have to say that if these allegations are true, the IRS can expect a very, very strong reaction from Congress.

I am also disturbed by the claims that although the national office may set guidelines on audit and collection procedures, regional offices ignore oftentimes those guidelines. This is a "fiefdom" type of mentality and management system that is intolerable and should be dealt with summarily.

Mr. Commissioner, the question before us today is: What can we do in the Congress to protect the rights of our citizens without handicapping the tax collection system? The citizens of this country are completely at the mercy of the Internal Revenue Service and must rely on it to collect taxes fairly and without malice.

If we find that under the existing procedures it is impossible to preserve the basic due process rights of taxpayers, then Congress is obliged and is mandated and challenged to make necessary reforms. We believe that the Taxpayers' Bill of Rights is a step in that right direction.

Mr. Commissioner, at this time, we will hear from the distinguished Chairman of the Finance Committee, Senator Bentsen.

Senator BENTSEN. Thank you very much, Mr. Chairman. Let me congratulate you on holding these hearings because what you are seeing too often is an adversarial relationship between the taxpayer and the IRS. In turn, you are looking at Government employees with a great deal of power in their hands, and sometimes that power is abused.

I must say for the Commissioner that I have been impressed with his early start on this. I looked at the situation we had on the W-4 Form, and he immediately reacted and did what he could to try to straighten out that form and make it more intelligible. We have a situation on taxes with the great complexity that is involved; and try as you may in legislation, you end up with some gray areas and the interpretation of that. Then, you have a situation that too often sets up a conflict.

So, what we are doing here and what you are doing is letting the taxpayers have a chance to sound off and tell what has happened to them on a personal basis, relating it to the members of the Congress. That is one of the great things about a democracy: When an individual citizen finds himself treated as a number, as someone who doesn't have a personal relationship with the person who is doing the examining and determining the amount to charge in tax that is to result, the Congress reacts to it and lets them relate.

And in turn, we call up the person in charge of that agency, as they have here—in the person of Commissioner Gibbs. So, I am hopeful that you are going to see some of these rough spots smoothed over and that we are going to find an more effective job and a better personal relationship.

As you have stated, the vast majority of these IRS employees do a good job and an effective job; but I know that, at about tax time, when everybody is working long hours, the frustrations are there on both sides of that equation. Then, we get some situations that result in things that are really a discredit to the United States Government.

So, I thank you for holding these hearings, and I wish you well; and I am delighted to see the distinguished Commissioner here who is a native of my State and a friend and I know is doing what he can to try to straighten that situation out.

Senator PRYOR. Thank you, Mr. Chairman. Senator Grassley.

Senator GRASSLEY. Mr. Commissioner, those of us on this panel from the grass roots are here to help you. We are here to help you because we have listened to these complaints out there at the grass roots. As recently as this week, touring our own States, we have heard some of these very complaints. I suppose they were somewhat instituted by the hearing we had and by the television comments on the last hearing; but we feel that this legislation gives you the tools to overcome some problems that are there, problems that we are sure you know about, problems that are probably very difficult for a new person like you coming in, dealing with an entrenched bureaucracy.

But this entrenched bureaucracy is the problem, and the tools contained in this bill will bring pressure from outside of that bureaucracy to help us find solutions to those problems. We want to work with you on this legislation. We don't claim to have written a perfect piece of legislation, but we do claim that we have found documented evidence of ample wrong being committed and see a need to change the public policy of this Government to give the taxpayers a better shake in the process, but at the same time bringing up the public awareness of what the problem is and also bringing credibility to the system so that people in a more voluntary way will pay taxes with the end result that, not only is the taxpayer going to be more satisfied, but the Treasury of the United States is better off.

Senator PRYOR. Thank you, Senator Grassley. We have also asked Senator Harry Reid of Nevada, one of our original cosponsors of the Taxpayers' Bill of Rights, to join us. Senator Reid.

Senator REID. Once again, Mr. Chairman, I congratulate you for taking the leadership in this area. I know in the past how difficult it has been to have hearings on bills like this, and I think the way in which you have arranged the hearings, the testimony has been very good. And I congratulate you on that.

I also think that these hearings are a great service to the taxpayer, for they lay the groundwork for future action on the bill. Mr. Chairman, the nation's taxpayers want this bill, as indicated by the show of mail that we have all received since the hearing a week ago last Friday.

Constituents and special interest groups didn't ask us to introduce this bill. Many bills and many pieces of legislation that we do introduce, Mr. Commissioner, are as a result of people coming to us from special interest groups; but that is not the case here. This bill was originally introduced by myself—my aspect of it—in reaction

to, I believe, a nationwide problem of alleged violations of taxpayers' rights by overzealous agents of the IRS.

And the testimony that was taken in a hearing a week ago last Friday indicated that. Even the former IRS agent who testified indicated that the vast, vast majority of the IRS agents are good, law-abiding citizens; but their value system is out of kilter.

My visit to Nevada last week and the piles of mail in support of the Taxpayers' Bill of Rights awaiting me on my return to Washington yesterday only serve to strengthen my conviction that this bill is needed to correct the real problems with IRS procedures leading to real abuses of taxpayers' rights. I, along with Chairman Bentsen, am impressed with how you have acted since you have taken over the job as Commissioner.

It appears to me that you are competent and effective and hopefully willing to work with the Congress. As Chairman Bentsen indicated, modification of the W-4 Form is one indication of your ability to react quickly to problems that taxpayers see. I also, of course, point out the 501(c)(3) regulation that you were willing to change, and I think that is important.

I have read the testimony that you are going to give today. I am a little concerned in that the testimony really doesn't get to the legislation specifically itself. I recognize that your job is to be a cheerleader for those many tens of thousands of people that work for the Internal Revenue Service and, in the testimony you have laid out, you have done a good job of that.

However, the testimony indicates that you believe current procedures are sufficient to safeguard the rights of taxpayers, and thus the bill is unnecessary. I would like you, however, Mr. Commissioner, to think of this bill as not a way to "bash" the IRS, but rather think of this bill as a way to correct the actions of a small percentage of IRS agents who give the entire Service a bad reputation.

By working for passage of this bill, I believe you can help make it effective and once and for all correct the problems that do exist. As you know, the IRS has an image problem. I don't think there is any question about that. Part of this stems from the resentment people feel, of course, every April 15th; and there isn't anything that you or I can do to change that. But much of the poor image is self inflicted.

For example, Mr. Chairman, in the Las Vegas District Office, if a taxpayer wants to speak with an agent, he can only do it through picking up a telephone from an intercom; he doesn't see anyone. He doesn't talk to anyone that he really knows exists. It is equally impossible to contact an agent by phone. The only number listed in the Las Vegas phone book for the local office is for criminal investigations. Other questions are referred to a toll-free number; and as the GAO recently indicated and demonstrated, this alternative will give you a 25 percent wrong answer. That is, one out of four is wrong. These are relatively minor problems, not directly addressed by this bill; but indirectly, the Taxpayers' Bill of Rights does deal with this problem because the purpose of the Taxpayers' Bill of Rights is to legislate the "S" for "service" back to the IRS, to require the IRS to abide by its agreements made in good faith with the taxpayers, to make the IRS take people and individual conditions under consideration when assessing penalties and use less

stringent enforcement methods to bring in the greatest amount of taxes.

In short, Commissioner Gibbs, the Taxpayers' Bill of Rights does nothing more than place the taxpayer on an equal footing with the tax collector.

I would also say, in looking at your testimony, that we are only dealing with a fraction of one percent of those problems with the IRS, but that fraction creates all the problems—or the vast, vast majority of the problems—that we see with people writing us letters.

I have here—and I picked this up as I walked out of the office—a letter from someone not from the State of Nevada but from the State of Texas, the home of the Chairman of this Committee and your home. This woman writes a letter that is very, very sad. Her husband was a consultant to a company that went bankrupt. They—you—have seized her wages, her husband has lost his job, and this is not an unrelated, far-fetched case. What comes to my mind is a company that filed bankruptcy in Nevada. There were a number of individuals asked by the Nevada Gaming Commission—the overseer of the gaming operations in Nevada—asked some people to come in and look at this operation and see if they could help. They had nothing—no financial interest in the company. They had nothing to do with it, except they were asked by the Nevada Gaming Commission to go in and look things over.

These people haven't been able to get tax refunds back for years. One attorney who was involved has had his tax refunds withheld for four years now. Even though it is a small percentage of people involved that pay taxes, it just gives the whole operation a bad name.

So, Mr. Chairman, I look forward to the Commissioner's testimony, and I look forward to being able to pursue some questions that I have, with some interrogation of the Commissioner and those people he brought with him.

Again, thank you very much for allowing me to be on this panel.

Senator PRYOR. Thank you, Senator Reid, and thank you for your participation. We welcome the statement of Senator Heinz, who is a member of this subcommittee, at this time. Senator Heinz, thank you for your support of this legislation.

Senator HEINZ. Mr. Chairman, thank you. I am pleased to welcome our Commissioner, Larry Gibbs. I am relieved to see him, but I expect not nearly as relieved as most all of our constituents to have April 15 have come and more or less gone.

As we all know, April 15 is a pretty tough deadline. There are a lot of people who are afraid they are not going to make it, and they are also afraid that, if they make a mistake, one of your gentlemen or your designees, are going to come after them. And for most taxpayers—those who don't make mistakes, of course—that rarely if ever happens; but for a few it does.

And although the taxpayer who has a problem with the IRS deserves to be treated with courtesy and respect, I can tell you and I suspect you know as well that that doesn't always happen. For the last 3 years, I have chaired numerous hearings that have looked into the operations of the IRS, most notably in conjunction with the Philadelphia Service Center and related episodes; and like my

colleagues, I have heard taxpayer after taxpayer testify about, in some cases, really appalling personal nightmares with the Agency.

But I must also say that, during the last 3 years, we have seen some substantial improvements in the system because Commissioner Eggar and you, Commissioner Gibbs, have been willing to work with us and follow the recommendations of the various GAO studies that the Senate and House have requested.

I also have to say, however, that notwithstanding those improvements, especially with the IRS computer systems and the Pennsylvania Service Center, I believe there is further room for improvement, and the Taxpayers' Bill of Rights of Senator Pryor is a very important start in the right direction.

Now, there is a lot that I like about the Taxpayers' Bill of Rights as it is written, but I have some reservations about some of the provisions in the bill. But, on balance, what it has is clearly needed. I would add that some of the provisions in Senator Pryor's legislation should and could be adopted by you, Mr. Commissioner, without legislation. They are clearly within your authority, and they would benefit, I think, the IRS as well as the taxpayer. Let me give you an example.

There is a provision that requires the Treasury to prepare a statement explaining the taxpayers' and the IRS's rights and obligations during an audit, and which goes on to describe the procedure for appeal, filing complaints, and pursuing refund claims. Now, I don't know of anybody who would disagree that that is not in principle a good idea or that it is not clearly needed. Every taxpayer ought to be able to know and to understand what his rights are, and you shouldn't have to hire an attorney or a CPA to get them interpreted to you.

The catch, of course, is that the explanation needs to be in plain English. And it is always difficult, and particularly difficult for tax lawyers who are trained in nuance and complexity; and if there is something we have learned I hope from the W-4 episode—that now we trust is fully corrected—it is that in trying to dot every "i" and cross every "t" you can confuse the daylights out of people.

So, my advice—and it is not meant as gratuitous advice— is for the IRS and you, Mr. Commissioner, to prepare such a brochure now and give it to every taxpayer who is advised of any problem on his tax return. And maybe you can get the people who did the revised, new W-4 to do that; don't get the people who did the first version of the W-4 Form. [Laughter.]

Another example is that, in Senator Pryor's bill, he would allow taxpayers the right to record IRS interviews. Why not? I just think that the IRS probably ought to have the same right. When a taxpayer has given the power of attorney to an accountant or a lawyer, I can't see any reason why the Service shouldn't deal with that person. Obviously, there are going to be times when the Service is going to have to deal directly with the taxpayer, but the general rule should be they are ready, willing, and able to deal with the person's power of attorney.

Senator Pryor's bill also gives the Office of the Ombudsman authority to issue a taxpayer assistance order for the relief of taxpayers who face unusual, unnecessary, irreplaceable loss due to the administration of the tax laws or some violation thereof. The Om-

budsman bill is an important role for the IRS in its relation to taxpayers, and it is my view that this authority would help him or her fulfill that role more effectively in resolving some of the problems. I question whether legislation is needed to do that; you could do that tomorrow, I suspect. And this is not an argument against Senator Pryor's legislation; it is just an argument for you moving faster than the legislative process, which can be time-consuming and cumbersome.

So, Mr. Chairman, I look forward to hearing the Commissioner's testimony on the subjects I have laid before him at this point and on other issues. I hope that we can continue to work together to improve the performance of the IRS so that it better serves both the interests of the Government and the taxpayers who pay all our salaries.

Thank you.

Senator PRYOR. Mr. Commissioner, once again we thank you for being here today. I have some more examples I will go over with you after a while. I want you to go forward with your testimony, but later I do want to ask you about four or five letters that I have received in the past several days that relate to specific areas that are included in the Taxpayers' Bill of Rights.

You are flanked, Mr. Commissioner, by some very distinguished officials of the Internal Revenue Service. We look forward to your statement, and I hope that you will introduce your friends this morning.

STATEMENT OF LAWRENCE B. GIBBS, COMMISSIONER, INTERNAL REVENUE SERVICE, ACCOMPANIED BY JAMES I. OWENS, DEPUTY COMMISSIONER; THOMAS COLEMAN, ACTING ASSOCIATE COMMISSIONER FOR OPERATIONS; AND JACK PETRIE, TAXPAYER OMBUDSMAN

Commissioner GIBBS. Mr. Chairman, thank you, and members of the subcommittee. I would like to begin by introducing the folks who are here with me this morning from the Internal Revenue Service. To my right Jim Owens, the Deputy Commissioner; to my left, Tom Coleman, who is the Regional Commissioner of our Western Region, but is here in the capacity as the Acting Associate Commissioner for Operations, which has responsibility over our compliance functions—examination, collection, criminal investigation, international; and to Tom's left, Jack Petrie, who is our Taxpayer Ombudsman. I will have more to say about Jack's position in the course of my testimony.

Mr. Chairman, I would like to submit for the record the written statement that we have provided to you and to the subcommittee. I would also like to begin, in the spirit of being constructive, by addressing specifically, before I actually give you an oral statement, some of the things that have just been mentioned.

Senator Reid mentioned, and I think properly so, that there is no item-by-item analysis of the provisions. Therefore, I would like to submit for the record an item-by-item analysis, and with your permission, Mr. Chairman, I will also submit that to the subcommittee.

Senator PRYOR. That is agreed to.

[The prepared information follows:]

Internal Revenue Service
Comments on Taxpayer Bill of Rights Legislation
April 21, 1987

Disclosure of Rights and Obligations of Taxpayers (S.604 and S.579

a. provision-

Within 180 days of enactment, a statement shall be prepared concerning taxpayers' and the Service's rights and obligations during an examination, appeal procedures, refund claims and complaint procedures and the Service's enforcement procedures (including assessments, levies and liens).

Drafts of the statement must be sent to the tax writing committees of Congress. Once finalized, the statement would be mailed with the tax forms sent to taxpayers.

b. comment-

The Service agrees with the intent of this section that taxpayers should be apprised of their rights and obligations. However, it is much more effective and efficient to provide this type of information when needed and to be able to tailor it to taxpayer circumstances and type of tax involved in a particular situation, as we are now doing with a number of publications. For example:

- Publication 556, "Examination of Returns, Appeal Rights and Claims for Refund"
- Publication 5, "Appeal Rights and Preparation of Protests in Unagreed Cases"
- Publication 586A, "The Collection Process (Income Tax Accounts)"
- Publication 594, "The Collection Process (Employment Tax Accounts)"

Office of Inspector General (S.604 and S.579)

a. provision-

A Treasury Department Office of Inspector General would be required by statute and control of the Service's Inspection staff would be transferred to it.

b. comment-

As proposed, the Internal Revenue Service opposes the establishment of a statutory Inspector General at the Treasury Department that would perform or have oversight over the functions presently performed by the Office of Inspection.

The Service opposes transferring control of the Inspection staff for several reasons. First, this function currently performs independent reviews of Service operations. If the Service's Inspection staff was transferred to Treasury, the practical effect would be fewer reviews of Service operations because the staff would be used elsewhere in the Department. Second, control of the Service's Inspection staff outside of the Service presents the risk of abuse and misuse because of the sensitivity of tax information and the tax collection process. Third, the sensitivity of tax administration should be a critical consideration in designing a Treasury Department audit and investigative structure because of the potential for unauthorized disclosures of and access to confidential tax information.

Procedures Involving Taxpayer Interviews (S.604 and S.579)

a. provision-

Taxpayer interviews must be conducted at a reasonable time and place convenient to the taxpayer and the Service and such meetings may be recorded. Also, a Miranda type warning must be given to the taxpayer and a person with a written power of attorney may be substituted for the taxpayer.

b. comment-

The Service currently attempts to hold taxpayer interviews at mutually convenient times and places. However, the proper supervision and time utilization of our compliance personnel, and potentially dangerous situations must also be considered.

The provision would also permit the recording of taxpayer interviews. In general, we have no objections to taxpayers recording interviews; in fact, it is our policy to allow such recordings. However, notification should be given in advance when appropriate and practicable by either party concerning their desire to record the proceedings.

Requiring "Miranda" type warnings in civil cases where there is no indication of fraud would be detrimental to both the taxpayer and the Service. Subjecting a taxpayer to warnings that are normally associated with criminal prosecutions would be intimidating, would create an adversarial relationship and could delay a reasonable settlement of any proposed civil deficiency.

Lastly, a taxpayer's presence may be necessary at some interviews, even if an authorized representative is present, because some examinations require information that only the taxpayer would have. We want to emphasize that not all examination situations require that the taxpayer be present.

General Accounting Office Oversight of the Administration of the Internal Revenue Laws (S.604 and S.579)

a. provision-

The GAO is required to review Service operations and perform special audits or investigations when requested by a committee or member of Congress. An annual report to the Congress with respect to several aspects of Service operations is required.

b. comment-

The type of oversight described already exists. The GAO performs a substantial number of reviews of Service operations, 40 in fiscal year 1986, and issues annual compendiums of the results of their reviews.

In addition, the Service performs its own internal reviews. Service policy and OMB, Treasury, and Comptroller General directives require our Internal Audit Division to provide an independent review and appraisal of all Service operations, to assure that responsibilities at all organizational levels are properly discharged with effectiveness and efficiency and in accordance with laws and regulations. These audits and reviews are conducted in accordance with professional auditing standards prescribed by the Comptroller General. In fiscal year 1986, Internal Audit issued 60 formal reports and more than 300 information memorandums covering various aspects of tax administration. Results of these audits are summarized annually and reported to the Treasury Inspector General.

Basis for Evaluation of Internal Revenue Service Employees (S.604 and S.579)

a. provision-

Evaluations of Service personnel shall not be based on sums collected from taxpayers.

b. comment-

The Service fully agrees that enforcement employees should not be evaluated on a "quota system". In fact, we have a Policy Statement, P-1-20, that states that tax enforcement results tabulations shall not be used to evaluate enforcement personnel or to impose production quotas or goals. This statement has been in effect since November 1973.

Authorizing, Requiring, or Conducting Certain Investigations, etc. (S.604 and S.579)

a. provision-

Service personnel may not conduct investigations into, or surveillance over, the beliefs or associations of an individual or organization, or maintain such records except for investigations concerning organized crime activities. Personnel may be held personally liable for violations.

b. comment-

The Service makes every attempt to protect the rights of individual taxpayers. However, this provision could preclude the Service from conducting investigations of tax protestor groups because protestors' beliefs concerning the tax system are often carried over to the use of illegal schemes to evade taxation.

Personal liability of our employees would have a negative impact on programs because of the potential for less vigorous enforcement. Such liability would also cause a major recruitment/retention problem, which could have an impact on the quality of many Service programs.

Levy and Distraint (S.604 and S.579)

a. provision-

The value and types of property exempt from levy are increased and the waiting period for a levy is increased from 10 to 30 days after the notice of intent to levy.

b. comment-

This section would eliminate or restrict the use of many of the tools the Congress has given the Service to collect the revenue. While few of the changes have negative administrative implications, we suggest the potential for negative revenue collection implications should be reviewed.

Also, an issue concerning fairness among taxpayers should be considered. Most taxpayers pay their full tax liability on time. For those that do not, extending the time in which they must pay from 10 to 30 days after notice and demand is made, gives them a 30 day interest free period that other taxpayers do not have.

Review of Jeopardy Levy and Assessment (S.604 amd S.579)

a. provision-

The section of the Code providing for administrative and judicial review of jeopardy assessments is expanded to include jeopardy levy and assessments.

b. comment-

The Service does not forsee substantial administrative implications in such a post action review.

Installment Payment of Tax Liability (S.604 and S.579)

a. provision-

Written offers of installment agreements must be made to all individuals whose tax liability is less than $20,000 and who have not been delinquent under another installment agreement during the previous three years. Such agreements are binding unless taxpayer-provided information is inaccurate or incomplete, or the financial condition of a taxpayer significantly changes, as determined at a hearing.

b. comment-

The Service policy on installment agreements has been criticized as being, alternately, too liberal or too conservative. Most recently, a 1981 GAO report criticized us for being overly generous in permitting installment agreements. While we attempt to use installment agreements where appropriate, offering such agreements to all of the noted individuals could jeopardize collection in many cases. In addition, it could be viewed negatively by taxpayers who pay their liability on a timely basis.

Advice of Internal Revenue Service (S.604)

a. provision-

A deficiency, and any penalty or interest imposed in it, shall be abated if it is attributable to erroneous written advice provided by the Service unless a taxpayer failed to provide adequate or accurate information. Also, when oral advice is given by the Service, a taxpayer must be informed that the Service is not bound by such advice.

b. comment-

Our existing taxpayer assistance programs would become far less effective as a result of a requirement to inform taxpayers that oral advice is not binding on the Service. To illustrate, if we assume that about one-fifth of our nearly 50 million annual taxpayer contacts requested technical tax law assistance in writing, we estimate the Service would be able to assist about 31 million fewer taxpayers annually, because the staff normally available to assist them would be tied up preparing written replies. Alternatively, to assist the 50 million taxpayers contacting the Service each year, while providing written replies, funding for the Taxpayer Service Program would have to be increased by $210 million to a total of $425 million.

In addition to the staffing problem, a totally new system of documentation and filing would have to be created and maintained. Telephone assistors would have to record taxpayers' questions verbatim, and associate the questions with a copy of the written replies so that the information would be retrievable at a later date when an abatement request was made. This would be a significant administrative burden on the Taxpayer Service function.

Due to the ambiguity of the statute, the provision abating any deficiency, interest and penalty attributable to erroneous written advice could be construed to include written advice on return preparation furnished by groups such as Volunteer Income Tax Assistance (VITA) or Tax Counseling for the Elderly (TCE). The phrase "erroneous advice furnished to the taxpayer in writing" could include direct preparation entries on returns, which still occur in an effort to assist taxpayers unable to prepare their own returns. All of these programs and the people they help would suffer.

Taxpayer Assistance Orders (S.604)

a. provision-

The Taxpayer Ombudsman may issue a Taxpayer Assistance Order if a taxpayer is suffering, or about to suffer, from a loss as a result of the ways the revenue laws are being administered. Such order may require the release of levied property or the cessation of an action.

b. comment

The Service agrees with the intent of this provision. Currently, we will hold a pending enforcement action in abeyance in situations of severe hardship, alleged improper notifications, questionable liability, or other reasons indicating that the action may be improper. The Taxpayer Ombudsman, Regional Commissioners, District Directors, Problem Resolution Officers, Division Chiefs, Branch Chiefs and Group Managers all have such authority. In fact, they frequently ask that actions be put on hold until a case can be reviewed. If there is a dispute as to the propriety of the action, the decision to stop action can be referred to the Deputy Commissioner.

The problems we have with the provision are that it does not provide well-defined criteria for the issuance of an order, and we believe a broader range of Service personnel, in addition to the Ombudsman, should have the ability to stop actions.

Administrative Appeal of Liens (S.604)

a. provision-

Taxpayers may appeal the imposition of a lien to the Secretary.

b. comment-

The Service already has and uses the authority in section 6325 of the Code to discharge specific property from the effect of a lien so long as the value of the government's interest is paid or the taxpayer has sufficient equity in other property under the lien to guarantee payment of the tax.

Minimum Sale Price (S.604)

a. provision-

The Service may not levy on property where levy expenses would exceed the tax liability.

b. comment-

The provision would eliminate the impact of penalties in the amount of $500 or less because we would not be able to enforce their collection. An example of such a penalty is the one for filing a frivolous return.

Limitations on Class Audits (S.604 and S.579)

a. provision-

Examinations of taxpayers identified with a particular trade, business or profession may only proceed after written notice is sent to each member of the group. The notice shall detail the items the group has in common, the reason the items are considered wrong and afford taxpayers an opportunity to file an amended return or contest the Service's position. If a taxpayer files an amended return, no penalty or interest shall be imposed on any additional tax due.

b. comment-

We strongly oppose this provision because it is inconsistent with the fundamental principle of fairness among taxpayers. Precluding examinations of certain taxpayers until they are afforded the opportunity to file amended returns without penalty or interest would have a negative effect on the self-assessment system because there would be no incentive to correctly report income, deductions, etc. Finally, identification of an entire class of taxpayers by the Service would be extremely difficult, if not impossible.

Burden of Proof in Administrative and Judicial Proceedings (S.604 and S.579)

a. provision-

The burden of proof on all issues rests with the Service unless the taxpayer is sole possessor of evidence.

b. comment-

In our self-assessment system, it is appropriate to place the burden of proof on the taxpayer because only he can reasonably be said to have control of, or access to, the evidence on the issues. The taxpayer knows the facts which relate to whether or not he incurred a deficiency and he can testify and present substantiating evidence of what his intent or purpose was. The Service, on the other hand, is not in a position to know the relevant facts. It must be permitted, like the private sector accountant, to examine and check the accuracy of the information reported. To accomplish this the Service must have an opportunity to review the facts which are controlled by the taxpayer.

Lastly, as you may be aware, this burden of proof change, in the area of fee awards, was raised during congressional consideration of the Tax Reform Act of 1986, but was not adopted.

Application of the Regulatory Flexibility Act to the Internal Revenue Service (S.604)

a. provision-

The requirements of the Regulatory Flexibility Act would apply to the Service's interpretative regulations.

b. comment-

The Service is charged with uniform application of the tax law. Absent specific direction from the Congress, which is provided in many areas, we may not create different rules for large and small taxpayers. Since we cannot promulgate special rules, any voluntary analysis of the differential impact on small business taxpayers would be of limited value. Recognizing the need for uniform application of the tax law, the Service provides special rules for small businesses only where Congress has indicated that special rules are appropriate.

Lastly, the taxpayers' need for prompt guidance on the provisions of the Tax Reform Act of 1986 would not be met.

Civil Action for Deprivation of Rights by Internal Revenue Service Employees (S.579)

a. provision-

Employees may be held personally liable for "the deprivation of any rights, privileges, or immunities secured by the Constitution."

b. comment-

A right of action against Service employees currently exists. The Supreme Court recognized a cause of action directly under the Constitution in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics. Bivens suits are an available remedy for those whose Constitutional rights have been violated by Federal employees acting under the color of Federal law. In fact, more than 1000 Bivens suits were filed against Service employees during fiscal years 1980 through 1986. It should be noted, however, that none of these suits has been ultimately successful.

It is worth noting that legislative attempts were made to include a provision in the Tax Reform Act of 1986 holding Service employees liable in actions brought by taxpayers. The House bill, H.R. 3838, included a proposed addition to section 7430 of the Code holding employees liable for portions of attorneys' fees awarded against the government. The proposal was not adopted.

Commissioner GIBBS. Your comments and Senator Grassley's comments struck responsive chords. I would like to cover some of the things that you discussed, as well as some of the things that Senator Reid and Senator Heinz discussed.

I would like to suggest that perhaps we can actually go through some of Senator Heinz's suggestions in a question and answer format because I think, in almost every instance, we have already adopted some or all of the suggestions.

Now, let me also introduce my oral statement by observing that our tax system raises almost $800 billion a year, and that is increasing every year. That fact makes our tax system the envy of the world; the fact that we can in a tax system raise that amount of revenue from our populace is quite significant.

It makes it possible for our Government to function, and for the United States to be recognized as the leader of the free world. At the same time, our tax system has borne increasing burdens over the last two decades. Almost constantly since 1969, we have changed our tax law: the 1969 Act, the 1974 Act, the 1976 Act, the 1978 Act, the 1981 Act, the 1982 Act, the 1984 Act and last fall the 1986 Act and each one of these were major changes.

Changes cause confusion; confusion creates distrust; and ultimately, distrust leads to disrespect of our tax laws. It is my observation that disrespect increases as people feel that similarly situated taxpayers not paying the same amount of tax.

I think the increasing disrespect for our tax laws over the last two decades has been shown through the increasing noncompliance with our tax laws in this country. This disrespect is also apparent in the size of the underground economy which, by our estimates, results in a tax gap, the difference between tax owed and tax paid, of in excess of $100 billion a year and that also is rising.

We have seen over the last two decades tax loopholes become tax shelters, and subsequently abusive tax shelters. We have seen the rise of tax protesters. We have seen tax gimmicks in the form of mail order ministries, family estate trusts, and a variety of Constitutional issues regarding whether people have to pay taxes in this country at all.

Our two most recent Presidents have observed that our tax law is, as one put it, "A disgrace to the human race," and President Reagan simply said that it was "simply un-American." Initially, our Government's reactions to this state of affairs, in the late 1970s and even into the 1980s, was to combat increasing noncompliance with additional penalties, to find ways to make it less economic, less appropriate to play the audit lottery, and to increase the IRS compliance programs for dealing with taxpayer noncompliance. And in short, it has seemed to me as a practitioner following the tax area, and as a former administrator back in the early 1970s in watching the tax law, that increasingly the dialogue has escalated in this country between the taxpayers and the Government.

Frankly, I am delighted with some of the very recent changes in these attitudes toward our tax system, toward our taxpayers, and toward the Internal Revenue Service. I think that these recent changes in attitude are based on a recognition that our tax system depends ultimately on the willingness of our taxpayers to comply with its provisions.

We have a truly voluntary self-assessment system in this country. Each year our tax-paying populace prepare and submit their own returns and tell the Internal Revenue Service what they owe. As our withholding experience earlier this year indicates, even our withholding system, in the final analysis, is voluntary.

When the taxpayer fills out his or her W-4, the amount of taxes to be withheld can be reduced by deductions, credits, exemptions; so, even the act of finalizing withholding is a voluntary action on the part of the American tax-paying public. We need the support and cooperation of taxpayers for our system to work. To obtain the type of cooperation we need from taxpayers, I believe that taxpayers must believe that our system, in the final analysis is fair.

I think first and foremost that the taxpayers must believe that our tax law is fair; and that is the magic of this 1986 Tax Act because I think it does make for a fairer tax law. It reduces the tax rates and it broadens the base. It eliminates the loopholes and the deductions and the credits, and it brings in a very, very strong minimum tax. I hope that we can communicate this to the American public in terms of the fairness of our tax system under this new law, with wealthier taxpayers and businesses in this country now paying their fair share. I think that this will have an important impact on people's perception as to the fairness of the law, if it is properly understood.

But taxpayers must also believe that the administration of our tax laws is fair; and I think there are two aspects of this. First, taxpayers must believe that if they are going to pay their fair share and others do not, then the Internal Revenue Service has the capability and the willingness to find those taxpayers who are not paying their fair share and cause them to do so.

The second aspect is that taxpayers must believe that if they are trying to pay their fair share, the IRS will provide help professionally, courteously, accurately, and promptly. And this second point is what is behind our commitment to the initiative that we have recently started for customer service within the Internal Revenue Service.

Mr. Chairman, I am not talking just about taxpayer service, that is IRS employees answering the telephone, providing walk-in assistance, or providing education and outreach programs as important as that is. Rather, I am addressing the issue of an attitudinal change within the Internal Revenue Service to see and treat taxpayers as customers, to distinguish between taxpayers who are noncompliant and those who are trying to comply and having trouble. At the same time we are emphasizing customer service, we are also emphasizing quality within the Internal Revenue Service. We recognize that as a result of the 1985 filing season, there is a certain amount of concern and disrespect for our tax system and our agency. We must increase the quality at Internal Revenue Service, and we are committed to doing things right the first time.

We are providing training in quality to all of our executives and managers and ultimately all of the employees in the Internal Revenue Service. I suggest that we combine our quality and our customer service initiatives to develop a greater concern and awareness for your constituents and our customers, the American taxpayers.

We will shortly be releasing four strategic initiatives in this area. One, to develop a greater concern for the taxpayer as our customer. Second, to identify and remove barriers to quality and customer service. Third, to instill within our employees a commitment to quality and customer service. And finally, to adopt management information systems that will permit us to track and enhance quality and customer service at Internal Revenue.

Our quality initiatives and our customer service initiatives are people-oriented. They speak of the importance of people. Quality is a uniquely human characteristic.

Mr. Chairman and members of the subcommittee, I want you to know that, as I traveled around the country over the last six months, and as I worked with Internal Revenue Service, when I was here previously and as a practitioner, I found that the employees at the Internal Revenue Service want respect and confidence. Those are two of the principal motivating elements to Internal Revenue Service employees.

Indeed, the Internal Revenue Service has a tradition of being a quality service organization. Our customer service initiative will support this tradition by seeing taxpayers as people, respecting their rights, and treating them courteously and professionally. At the same time we begin these initiatives, I think it is also incumbent upon us as an organization to recognize that we are dealing with humans within the Internal Revenue Service and in the taxpaying public, and as humans, we are going to make mistakes from time to time.

We deal with 100 million or more taxpayers a year, and our dealings are inherently intrusive because they deal with some of the most sensitive of economic and personal issues. Two aspects of our customer service deal with these items.

First, a customer service program that encourages professionalism on the part of our employees; and second, a customer service program that ensures adequate controls and procedures to correct mistakes and protect taxpayers' rights when mistakes occur. Indeed, when the mistakes do occur, I suggest that we have management requirements, techniques and procedures in place to address them. Also, our Problem Resolution Program, overseen by Mr. Petrie as our Taxpayer Ombudsman, is another way in which we can address mistakes, systemic problems, and protect taxpayer rights.

Finally, if mistakes do occur and are not corrected, we have an inspection part of our organization whose duty it is to investigate our employees and determine if there are violations of procedures or taxpayer rights.

In speaking to the professionalism of our employees, I would like to mention that we are doing a number of things to provide better training to our employees and to motivate them along the lines that I have been discussing.

One of the key issues raised in this connection is the way in which we compensate and motivate our collection employees. I have said repeatedly, as have my predecessors, that there is a written and a formal policy that makes it inappropriate to take into account enforcement statistics in compensating our collection personnel.

We have recently gone to the field, to our Regional Commissioners, to the District Directors, and ultimately to our collection personnel to check to see once again whether this policy is being followed.

Unfortunately, I think that we do have instances, from time to time, where this policy is not followed, but I would like to share with you some of the things that we are doing to correct that problem. One way is that in recruiting our collection personnel, we are looking for people who have both the technical skills that collection requires, and the people skills, the "meet and deal" skills.

In addition to the technical training that we offer, to our collection officers, we also offer training to suggest ways in which they can collect revenue while still dealing with the sensitivities and the rights of the taxpayers involved. We are providing sensitivity training to our collection staffs to help them recognize when their discussions, and actions are causing taxpayers to react in an entirely inappropriate and adverse manner. We are also suggesting that there are ways short of seizure and levy where you can work with taxpayers to secure their assistance in the collection area.

We recognize that the collection activity is a very, very difficult job, and we are doing several things to help in that regard. One of the things that we are testing is to require our collection personnel to get away from their collection activities from time to time and to do some audit work, if you will, in the employment tax area, to give them a break from the day-to-day dealings which can be very confrontive with taxpayers in the collection process.

In certain areas, we are also suggesting that our tax collection personnel participate in our taxpayer assistance programs to give them a feel for what it is like to assist taxpayers.

Finally, with our new technology, the automated collection system, we are using the telephone, which is less intrusive than a call on the taxpayer, to collect more and more of our revenue. We are planning on providing additional automation in our integrated collection system to all of our collection agents. The idea is to use our technology to help our collection personnel to feel and act more as professionals.

One of the other things that was noted in the discussion that followed the April 10 hearing is that the emphasis in our budget on compliance resources may have sent a message within the organization that the collection of revenues is what is important at Internal Revenue Service today. Members of the subcommittee, Mr. Chairman, this is why I am repeatedly emphasizing the importance of customer service.

Now, I have already stated that I think our compliance functions are very important at Internal Revenue Service, and I do, for the reasons that I have indicated. But we must balance the compliance aspects with a customer service aspect; and for that reason, I am trying to bring that balance in our customer service attitudes and in our taxpayer service programs.

I would also suggest that there are ways that we can help our compliance personnel even more. I am talking to them today about customer service in terms of their professionalism as they deal with taxpayers, and I would like to give you specific examples in

the examination area where we are emphasizing the professionalism through providing additional technology to our people with our lap-top computers.

In Dallas several weeks ago, I presented the 10,000th lap-top computer in our examination area. Before the end of this year, we will have about 18,000 lap-top computers. What we are saying to our examination employees is that they are going to be trained as professionals, and they are going to be expected to act as professionals in terms of the quality of the examinations they provide, and the quality of the determinations with respect to the taxes owed.

We are doing something else in examination that has not been done in recent years. Usually, with an Act like the 1986 Act, it is several years before examination gets trained because it is several years before you begin to audit the returns under the new Act. This year we are offering preliminary training to our examination personnel. We are trying to say to them that if you are professionals, you ought to know something about this new Act, simply because it is an important part of our environment. We are trying to make ways to raise the level of professionalism in our examination program today.

As we begin to address professionalism in the compliance area in the examination side, I would like to discuss with you some of the proposals that I feel are headed in the wrong direction. I think our examination program is difficult enough without a Miranda type warning at the beginning of the interviews. However, I recognize that it is important to address taxpayer rights and, particularly important at the time an examination is started.

We send a letter, at the time an examination is begun which explains the taxpayer's rights and I will be delighted to provide the letter to the subcommittee so that you can see for yourselves whether the language is sufficiently understandable. At a time the appeal is taken from the examination, if the taxpayer disagrees, we again provide a detailed explanation of what the taxpayers' rights are in the appellate and court process.

We have a publication that also addresses this; and the taxpayer, in addition to being given a summary of the rights, is also referred to the publication, which can be ordered through a toll-free telephone number if the taxpayer wishes to have it.

I would also like to suggest that, with respect to taxpayer interviews in connection with audits, it seems to me that this is an inherent part of recognizing our tax auditors as professionals. Let me say it another way. In the private sector, if a professional auditor is auditing the Government, a municipality, I dare say that under certain circumstances, that auditor would want to talk directly to the person who has responsibility for the books and records that are being audited, and would refuse to deal solely through an intermediary.

Similarly, as we conduct audits, there are going to be times when we are going to seek to talk directly to the taxpayer. This is not intended to bypass the attorney or the accountant who is representing the taxpayer; indeed, we welcome their participation in the discussion, but only along with the taxpayer.

I mentioned that, when mistakes do occur, we must be prepared in the Internal Revenue Service to address those mistakes. I believe we are doing just that through our Problem Resolution Program. The objectives of this program are to address the mistakes, the problems that arise from time to time, when a taxpayer's problems are not handled through normal channels, to identify systemic or procedural shortcomings, and also to assure taxpayers about what their rights are and to see that those rights are being protected. Currently, the Ombudsman is working directly with me and with my staff to enhance the visibility and importance of our Problem Resolution Program.

Mr. Chairman and members of the subcommittee, I will go back this afternoon to meet with Problem Resolution Officers from all over the country to discuss issues and problems that we are presently facing because they are in the best position to tell the Internal Revenue Service and the Commissioner, what problems we are having. In a week or so, I am going to be meeting in Washington, DC, with all the Problem Resolution Officers. We are bringing them in to sit down and talk about our Problem Resolution Program.

Mr. Chairman, this has been somewhat of an extended opening statement. I would like to conclude with an offer to you, Mr. Chairman, and to the subcommittee. When I was here at the last hearing, Mr. Chairman, you made me an offer that you said you hoped I could not and would not refuse. Mr. Chairman, Zacchias—your tax collector—would like to in turn make you an offer along with the other members of the subcommittee that I hope you cannot refuse.

I would like to suggest that together we begin to identify the problems about which we are mutually concerned, that we identify the causes of those problems, and we take a look at the alternative range of solutions that may be appropriate to address the causes and the problems that are there.

I would like to invite all of you to join me in attempting to restore and enhance the respect and confidence that we so badly need in our tax system today. I would like to ask your support in making our tax system as good as it can be.

And I would like to conclude by submitting for the record that we must keep this in perspective. By and large, we are talking about a very small minority of problems in a tax administration that, for all of its faults, is recognized as being the best in the world by the countries and by my counterparts around the world. They look to the Internal Revenue Service for guidance in this area, and that is something that I look forward to working with you to give.

In short, I would like to offer my commitment and ask for yours to make our tax system as good as it can be. Thank you, Mr. Chairman.

Senator PRYOR. Thank you, Mr. Commissioner, and we will certainly entertain that offer.

[The prepared written statement of Commissioner Gibbs follows:]

STATEMENT OF LAWRENCE B. GIBBS, COMMISSIONER OF THE INTERNAL REVENUE SERVICE

Mr. Chairman and members of the subcommittee, I am pleased to be here today to offer our comments on the important area of taxpayer rights and the two bills before the subcommittee, S. 579 and S. 604. With me are the deputy Commissioner. Jim Owens, the Acting Associate Commissioner for Operations. Tom Coleman, and the Taxpayer Ombudsman, Jack Petrie. We will be available to respond to your questions at the conclusion of my testimony.

Let me state at the outset that the Internal Revenue Service firmly believes in safeguarding taxpayers' rights because taxpayers' cooperation and their perception of the service as being an even-handed tax administrator is an important contribution to the success of our self-assessment tax system.

We also believe that one way to enhance a taxpayer's cooperation and perception of the Internal Revenue Service is to improve the quality of the services we provide. Therefore, we have been hard at work recently on a variety of quality initiatives designed to increase the public's confidence in our fair administration of the tax system. Many of these initiatives build on the idea that the taxpayer is our customer, and that as a customer, he or she deserves to be treated fairly, competently, professionally and timely.

This attitude is important whether the Service employee is a mail clerk, a forms designer, a tax collector, or an executive. Each of us is committed to achieving a tax administration system which is firm but balanced, and dedicated to providing competent and professional service to its customers, the American public. Our commitment to quality is embodied in a recent policy statement, a copy of which is attached to my testimony.

While our goal, through these initiatives, is to consistently be considered reasonable and effective tax administrators, we from time to time hear things about ourselves that suggest we do not alwavs achieve this goal. To some extent, this may be inevitable with more than 100,000 employees and millions of taxpayer contacts each year. The important thing is how we react to constructive criticism—not by hunkering down and being defensive, but by being flexible enough to admit mistakes and make necessary corrections.

In my testimony today, I would like to focus on our efforts with respect to several areas of concern evidenced by provisions of the taxpayer bill of rights measures recently introduced.

TAXPAYER SERVICE AND INFORMATION REGARDING TAXPAYERS' RIGHTS

The Taxpayer Service Division if often the first personal contact a taxpayer has with the Internal Revenue Service.

This Division has many programs in place to provide information to our customers, the taxpayers. Some programs involve direct assistance, such as our walk-in and telephone assistance programs. To improve service in this area, some of our offices are testing plans to stay open for telephone inquiries in the evening and on weekends during the filing season. Also, during the last week or two of the filing season, many offices offer extended assistance hours. This year, we have allocated about 3500 assistors and telephone lines for the filing season to respond to telephone inquiries. Nationwide in 1987, we expect to assist 40 million callers.

We expect to assist an additional 10 million taxpayers this year through another program called teletax. This program provides recorded information on the status of income tax refunds and nearly 150 different tax topics. Using a push button phone, a taxpayer can obtain information without waiting for an employee to be available.

Our distribution of forms and publications is another way we provide information to taxpayers. When a taxpayer becomes involved in an examination or collection procedure where the taxpayer could benefit by having specific information concerning service procedures and his or her appeal rights, we take the initiative in providing that information. We believe that taxpayers have a right to expect this kind of service from us and that providing the information to the taxpayers who need it, when they need it, better serves the public than providing all taxpayers annually with information most will never need.

We have attached, for the record, a copy of four Internal Revenue Service publications, that delineate taxpayers' rights in the examination, appeals and collection processes. Under the Service's examination procedures, the initial contact letter explains Service procedures and the taxpayer's appeal rights and advises the taxpayer of the availability of a more detailed publication, Publication 556, "Examination of Returns, Appeal Rights and Claims for Refund." Moreover, if agreement is not reached during the examination, another publication concerning taxpayer rights is furnished the taxpayer. This is Publication 5, entitled "Appeal Rights and the Preparation of Protests in Unagreed Cases." If it is necessary for a taxpayer's case to

proceed to the collection process, the taxpayer receives another publication from the Service which explains the collection process and the taxpayer's rights during collection. These are Publication 586a, "The Collection Process (Income Tax Accounts)", and Publication 594 "The Collection Process (Employment Tax Accounts)."

Besides receiving these publications, taxpayers are provided additional information in the contact letters that are sent to them proposing assessment of taxes. This information encompasses appeal rights to our appeals division.

PROFESSIONALISM

Because improving the quality of our tax system cannot be accomplished without the cooperation of our own employees, we place great emphasis on enhancing employee professionalism. Professionalism is the key watchword in our relationship with taxpayers.

The Service attempts to recruit the best possible people, particularly for the occupational fields that must regularly meet with the public. For example, over a period of approximately three years ending in 1986, our collection function worked with testing specialists at the Office of Personnel Management to develop an examination to screen for new revenue officers. The examination consists of two parts, a written examination, which asks candidates to answer job related questions, and a structured interview, which is conducted by collection personnel and which, among other things, attempts to ascertain if the candidate possesses "Meet and deal" skills necessary for the revenue officer position. Collection managers are pleased with the process and find that it identifies the candidates of high caliber.

Training then begins almost immediately and continues throughout the careers of our employees. For example, special agents and internal security inspectors attend Criminal Investigator School at the Federal Law Enforcement Training Center in Glynco, Georgia. The curriculum includes a course on ethics. Also, tax examiners receive classroom training on both the technical aspects of their jobs and on telephone communications as part of their basic training. They are then assigned on-the-job trainers who coach them until their manager determines that they can function on their own. New revenue agents receive over 24 weeks of classroom training, spread out over five phases. During this training, taxpayer rights are continually stressed. This is equally true for tax auditor training.

Many areas within the Service have Continuing Professional Education (CPE) programs which further refine and enhance employee skills. These programs and other refresher training emphasize quality and courtesy to taxpayers. For example, the collection CPE course includes lessons on the power of positive contacts and effective communications, both of which stress the proper treatment of taxpayers. For this year, collection is developing additional training for all collection employees on customer service and on how to deal with people when they are upset or irritated. The training will be given before the end of the fiscal year.

Quality, by way of a dramatic reduction of a taxpayer's time needed during an examination, is also being pursued through automation. By the end of 1987, over 18,000 revenue agents will be equipped with and trained on portable computers. The automation of the examination process will also greatly enhance the quality and accuracy of an examination which will serve both the taxpayers' and Service's interests in efficient and professional contacts.

While we have several concerns about various provisions of the bills introduced, I would like to specifically point to two of the provisions of S. 579 and S. 604 which could be counterproductive to our efforts in encouraging a positive and professional relationship with taxpayers.

First, section 3 of S. 579 would hold Service employees personally liable for the deprivation of any rights, privileges, or immunities secured by the Constitution could have a chilling effect on our ability to recruit and retain quality people. It could inhibit proper enforcement of the tax laws by Service employees. We believe that if an employee does act improperly, the civil service system provides a variety of adverse personnel actions for conduct related offenses, including termination, that the Service can and does utilize. Also, investigations of criminal offenses are handled by our Internal Security Division.

Second, the provision in both bills requiring "Miranda" type warnings in civil cases where there is no indication of fraud could be detrimental to both the taxpayer and the Service. Subjecting a taxpayer to warnings that are normally associated with criminal prosecutions would be intimidating for many taxpayers, would immediately create an adversarial relationship and could impede efforts to reach a reasonable settlement of any proposed civil deficiency. The concept of opening a tax-

payer contact with a criminal investigation warning obviously runs counter to our attempts to provide for more professional, courteous and positive relationships with taxpayers.

It should be noted that in criminal investigations, taxpayers are currently given "Miranda" type warnings at the first offical meeting with our special agents. We do not believe mandating this type of warning for all examination interviews is appropriate.

INTERNAL AND EXTERNAL CONTROLS

To assure a high level of efficiency, effectiveness, integrity and fairness, it is essential that we maintain a variety of mechanisms designed to review employee actions. A blend of internal and external reviews and controls curently exists.

The Service performs its own internal reviews. Service policy and Office of Management and Budget, Treasury and Comptroller General Directives require our Inspection Service's Internal Audit Division to conduct an independent review and appraisal of all Service operations to assure that responsibilities at all organizational levels are properly discharged with effectiveness and efficiency and in accordance with the laws and regulations. These reviews are performed in accordance with professional auditing standards prescribed by the Comptroller General. In fiscal year 1986, Internal Audit issued 60 formal reports covering various aspects of tax administration. Results of these reports are summarized monthly and annually and forwarded to the Treasury Inspector General. Additionally, Internal Audit issued more than 300 information memorandums during that fiscal year which assisted managment in carrying out its responsibilities.

Inspection's Internal Security Division investigates integrity breakdowns. The results of such investigations are reported to management so that internal safeguards may be revised, if necessary, to prevent similar actions in the future. The division also either conducts checks on most new employees and applicants or ensures the checks are performed to make sure that those individuals are qualified to serve as Service employees.

Internal Security Division also conducts projects to test the effectiveness of internal safeguards in various IRS functions and apprises mangement of its findings. This division also operates an extensive program of presentations along with mangement designed to instill in employees the importance of integrity and the action to take when breaches are detected.

Inspection's current organizational structure has the high level of expertise needed to detect and investigate offenses and to conduct reviews of very complex and decentralized operations in a timely and responsible manner.

Additionally, the Service has several methods of performing quality reviews, depending on the level which is required. On an individual level, the manager is responsible for evaluating an employee's work. This is the most basic control/review conducted. Elements of this review include noting whether the quality is excellent, good, average, fair or poor; providing feedback for improvement; providing the necessary training to make certain improvement can be made, and finally, following up at a later time to be certain the desired improvement is accomplished.

I would like to note here that enforcement personnel are not evaluated on a quota system. In fact, we have a policy statement, P-1-20, which states that tax enforcement results tabulations shall not be used to evaluate such personnel or to impose any production quotas or goals. I have attached a copy of that policy statment to my testimony.

The Service is organized in such a way that each level has the responsibility for providing formal and informal feedback to the next lower level regarding quality. For example, the seven regions monitor the products produced by the districts and service centers in a program called Regional Office Review Program, and district and service center managers and held accountable for the work of their respective staffs. Functional areas within the national office also conduct quality reviews of the field operations in their program areas holding the regions accountable for district/service center activities.

Within the last few years, innovative techniques have been developed, tested, and adopted that look for quality in a different way The focus is error prevention rather than error detection and involves product review instead of procedural review. There is a strong emphasis on building quality into procedures and systems with two primary goals in mind: timely and accurate processing of tax returns and refunds, and timely and accurate dissemination of information to taxpayers.

Additionally, congressional oversight hearings such as this one, and the General Accounting Office provide frequent independent reviews of our operations. As I am

sure you are aware, the GAO performs a substantial number of reviews of service operations, 40 in fiscal year 1986, and issues annual compendiums of the results of their reviews.

ENFORCEMENT AND COLLECTION ACTIONS

The Congress has provided many tools to the Service to collect the revenue, and with them goes responsibility for their judicious use. While the use of some of these tools, such as levies and seizures, may not be pleasant, there are situations where they are necessary.

Because this area involves so much emotion, I would like to take you through our collection process, pointing out what we do to advise taxpayers of their rights and to safeguard these rights at each stage of the process. It must be remembered that none of the following actions occur until after a tax liability has been established.

Beginning with the initial notice of assessment, we send individual income taxpayers up to five notices spaced at five week intervals and business taxpayers up to three notices at five and four week intervals. Service Center Collection Branches (SCCB) process collection related work during this correspondence phase of our processing. Balance due notices are quality reviewed before mailing. The last notice is sent by certified mail and advises the taxpayer of our intent to levy if a response is not received within 10 days from the date of the notice. In fiscal year 1986, 13.7 million liabilities were assessed and entered this correspondence process.

Most accounts which cannot be resolved by correspondence are forwarded to our Automated Collection System (ACS) call sites. If mail has been returned undelivered, the ACS call site attempts to locate the taxpayer by telephone to resolve the liability. Where the final notice of intent to levy has been sent, but the taxpayer has failed to respond, a Notice of Levy is usually sent to the taxpayer's employer or bank. After this initial levy, our employees make individual case decisions on additional actions.

While a single ACS levy seldom results in full payment of the liability, it usually causes delinquent taxpayers to contact us. We obtain financial information from the taxpayer to determine his or her ability to pay. If immediate payment of the liability is not possible, we will either enter into an installment agreement or decide to temporarily set the account aside because of hardship. During fiscal year 1986, we entered into 651,245 installment agreements.

ACS has initiated may procedural and system actions to simplify our dealings with taxpayers. For example, ACS provides that verbal requests for penalty abatement usually are acceptable, a departure from earlier requirements that such requests be in writing. We have liberalized telephone authority to eliminate unnecessary paperwork that burdens both the taxpayer and us, and to encourage speedy case resolutions. For example, we have eliminated the need for ACS to request lengthy paper financial statements from taxpayers. Instead all necessary information to make a case decision is secured by telephone. Also, regarding installment agreements, we have emphasized the use of alternative methods for paying delinquent accounts through electronic fund transfer or payroll deduction, both of which substantially reduce potential problems.

Cases where ACS has been unable to resolve the account are forwarded next to our district offices for assignment to revenue officers for personal contact, in most cases at the taxpayer's home or place of business. The revenue officer, based on their contacts and further in-depth investigation, determines the most appropriate method of resolving the account. In a very small percentage of cases, this may include seizure and sale. In fiscal year 1986, 22,450 seizures were made and 4,242 sales were conducted. These sales were to resolve approximately 17,000 liabilities, which is only 0.1 percent of the case of a seizure of tangible property, the taxpayer is contacted personally and given a final opportunity to pay prior to seizure. All seizure actions require management review and approval. Seizure of personal residence require to levels of management approval.

PROBLEM RESOLUTION

Even though we attempt to deal with taxpayers in a manner that ensures fairness, as I said earlier, problems still occur. This is why, in 1977, we established the Problem Resolution Program (PRP). The executive in charge of this program is the Taxpayer Ombudsman. The Ombudsman is independent of all other IRS functions and reports directly to the Commissioner as an advocate for taxpayers.

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The Problem Resolution Program is not a substitute for the examination or appeals process, nor does it help taxpayers resolve legal or technical tax questions. The primary objectives of PRP are:

Making certain that taxpayers' problems that are not resolved through normal channels are promptly and properly handled;

Acting as an additional internal control in identifying systemic or procedural shortcomings and bringing them to the attention of management; and

Assuring that taxpayers are made aware of their appeal rights and, that their rights are protected.

Problem resolution officers in each district office or service center can cut across functional lines to deal quickly with taxpayers' problems. Every effort is made to resolve a taxpayer's problem within five working days. If a problem cannot be resolved within this time period, the taxpayer is advised of the progress being made. Most cases are settled within 30 days, and surveys show that over 90 percent of taxpayers assisted by the program are satisfied with how PRP handled their problems.

CONCLUSION

Attached to my written statement are detailed comments on each of the bills.

Mr. Chairman, I believe we are heading in the right direction by placing our emphasis on quality service and positive relationships with taxpayers. So long as we can administer the tax laws with fairness and competence and can count on the cooperation and constructive criticism of taxpayers, we can't help but go a long way toward insuring the protection of our voluntary tax system.

Knowing of the Chairman's and this Subcommittee's interest in providing courteous and professional service to taxpayers, we look forward to continuing candid and constructive dialog with the Subcommittee.

My colleagues and I will be happy to respond to your questions.

Senator PRYOR. Now, I would like to make you a counter offer, and that counter offer is: If we want to restore trust and respect for a tax system that you maintain has from time to time fallen into a state of distrust and disrespect, there would be nothing more refreshing and nothing more constructive that I could think of than for the Internal Revenue Service to endorse all 17 sections of the Taxpayers' Bill of Rights. Those areas that you have discussed today, Mr. Commissioner, in all due respect, are all embodied in this legislation that several of us have now introduced into the Senate.

We can have 8,000 new IRS employees that I think you are requesting. We can have computers that sit in everyone's lap or wherever they sit. [Laughter.]

We can change tax laws; and in this room, we wrote a new tax bill last year. We can do all of this, but until we get something more basic than that straightened out, we are going to still have a tax system that people fear, that they distrust, that they have no respect for; and that is where we are today. We have a human element, a human relationship, that is lacking today in many instances between the Internal Revenue Service and the American taxpayer.

Mr. Commissioner, I have spent several hours with you talking about all of the changes that you would like to see made, and I know that you, in good faith, are proceeding to make those changes.

Frankly, I think that you are up against a bureaucracy in the Internal Revenue Service, and I truly believe that it is going to take the Congress' intervention to give you the support that I know you sincerely want.

Here is a letter from Phoenix, Arizona. This is the type of situation that I think creates distrust. It is from a widow and is a letter

to me dated April 10th. She lives on a widow's pension of $478.00 a month. Even though she did not agree with the IRS assessment, she finally wrote five checks of $320.00 each and sent them as payment because she said she could not afford to fight. She wrote a letter of explanation to the IRS detailing that she hoped that these checks would be deposited not all at one time, but 30 days apart. That was a good faith effort on this lady's part.

Here is her paragraph that I would like to read:

> I wrote a letter of explanation explaining in detail why I had to pay in installments. I mailed all five checks at one time. Today, just today, I have learned that my good faith is unilateral. If the IRS had recognized my situation and my good faith effort as explained in my letter and submitted the checks for payment one at a time over the next five months as I requested, our business together would be concluded. Rather, the IRS chose to act in a callous, insensitive, cavalier, arrogant, uncompromising, and punitive manner.
>
> They cashed all five checks at once, and, of course, most of them bounced.

Because of bounced checks she was placed in a bad situation with the law enforcement agency in the State of Arizona.

Here is a situation in Denver where a small businessman basically turned himself in to the Internal Revenue Service. He found that he had been underwithholding on his FICA taxes. He went to the IRS in December of 1986 and he told them what he had done. In February, they called him up and said: "Why don't we sit down and talk about this?" He said: "Good, I have been waiting for your call. I want to get squared away with you."

He went to the IRS in Denver, and literally while he was in the IRS office trying to work out his situation, the Internal Revenue Service was in the process of seizing and confiscating all of his assets. They closed his bank account, and seizing every asset that he had.

This was in the Denver Post. It is a story that I think has received some publicity. But once again, this is a case that I truly think creates a disrespect for the system.

You may say that all these are just people who don't like to pay taxes. Well, here is a letter from a United States District Judge who says that we need the Taxpayers' Bill of Rights or something like that. I think that is a pretty strong statement.

We talk about computers, and some of these stories may be humorous, but some of them may not. In this letter a person received a notice of a tax deficit of four cents. The IRS assessed a penalty $3.84 and daily interest of three cents. Yearly interest on the four cent obligation equaled $10.65, which this person suggested is usury.

We received a call just last Thursday from a small businessman who owns a restaurant in the State of Arkansas. I think there are a lot of agents in the field that really have a thing against small business. In many of the letters that we are receiving the taxpayers are saying that they are hearing from agents that it is more efficient to close down the small business than it is to work out an installment agreement to collect the taxes.

The owner of this small and, I must say, very well-known restaurant went to the IRS and admitted that he had found a shortage in the withholding of FICA taxes. He went to the Internal Revenue Service and said: "I have been underwithholding for a period of

several months. I want to work out an installment agreement." They said: "We appreciate your coming in, and we will be back in touch." Weeks went by. Finally, he got a call from the Internal Revenue Service saying we are giving you 10 days and 10 days only to pay up your back taxes. He said: "I can't do it. I can pay over a twelve-month period in an installment agreement, but I cannot do it in 10 days."

The restaurant owner was informed that if he couldn't pay up in 10 days, the IRS would seize all his assets and take over his restaurant. Well, that restaurant today is in Chapter 11 bankruptcy, Mr. Commissioner. There should have been no problem with this man working out an installment agreement. The Taxpayers' Bill of Rights would have addressed that particular situation with that small business.

I really feel today that the problems are not technical; they are not with computers. They are with people. This is a people-to-people system of taxation. We know that we have to pay taxes to live in a free society. I just want to bring some of these cases to your attention to emphasize the need for putting some of the language of this bill not in manuals, not in regulations, not in rules, but in the law. And that is what the Taxpayers' Bill of Rights is all about.

Now I will call on Senator Grassley for questioning. Senator Grassley? I would like, if I could, to invoke the five-minute rule.

Senator GRASSLEY. Commissioner Gibbs, I want to start my questioning by asking comments from you on the administrative inspector general. How much direct audit and investigative responsibility does the present administratively created inspector general have over the Treasury's total budget?

Commissioner GIBBS. I am sorry, Senator. Could you repeat the question?

Senator GRASSLEY. Yes. How much direct audit and investigative responsibility does the present administratively created inspector general have over the Treasury's total budget?

Commissioner GIBBS. Over the total budget?

Senator GRASSLEY. Yes.

Commissioner GIBBS. Senator, I will be glad to submit the answer. I don't know the answer to that question in terms of the total budget of the Treasury.

Senator GRASSLEY. Well, I believe it is very much in a minority. The General Accounting Office referred to it as 11 percent, but I would stand corrected. That is why I asked you if you had a figure. What percentage of the Treasury's authorized staff is subject to direct audit or investigative authority by the present Inspector General?

Commissioner GIBBS. Again, I do not know, Senator.

Senator GRASSLEY. All right. Again, submit that for the record.

Commissioner GIBBS. We will be glad to.

[The prepared information follows:]

INSPECTOR GENERAL AUDIT AND INVESTIGATIVE AUTHORITY

The Inspector General had a direct audit and investigative responsibility in FY 85 over 11 percent of the Treasury's total budget ($597.8 million out of $5.4 billion) and over 7 percent of the Treasury's staff (8,451 out of 122,236 employees).

Senator GRASSLEY. Again, we have the General Accounting Office saying it is only seven percent. And how many internal audits were conducted within the IRS over fiscal year 1986?

Commissioner GIBBS. I am told, Senator, that during the period, we had 60 that were nationwide, and we had 300 audits that were localized.

Senator GRASSLEY. All right. Then, how many internal investigations as opposed to the audits were conducted within the IRS for fiscal year 1986?

Commissioner GIBBS. Tax examinations?

Senator GRASSLEY. Internal investigations.

Commissioner GIBBS. May I submit that as well for the record, Senator?

Senator GRASSLEY. Yes.

Commissioner GIBBS. I don't have that information at my fingertips.

[The prepared information follows:]

INTERNAL INVESTIGATIONS AND AUDITS

In FY 86, 2,719 internal investigations were conducted as opposed to 360 internal audits during the same time.

Senator GRASSLEY. Those statistics are important from the standpoint of setting the stage for my next question, which would then ask: How many of those audits or investigations were considered significant enough to report to the present Inspector General as required by the regulations adopted by the department in 1986?

Commissioner GIBBS. Senator Grassley, I am told that, with respect to our internal audit reports, all of the 60 internal reports that I mentioned would have gone to the Inspector General. With respect to the 300 individualized reports, I will have to submit that for the record in terms of how many of those would have gone, but relatively few, I would think.

Senator GRASSLEY. All right.

[The prepared information follows:]

FORMAL REFERRALS DURING FISCAL YEAR 1986 TO THE INSPECTOR GENERAL

During FY 86, 60 audits and 31 investigations were formally referred to the Inspector General. In addition, IRS Inspection informally apprised the Inspector General of other audits and investigations at monthly meetings between the two offices. The number of those informally discussed is not documented.

Senator GRASSLEY. Then, of those 60, give me just some sort of general description of what kinds of cases these might have been because it is important for us to understand what constitutes a significant case that might be then referred to the Inspector General.

Commissioner GIBBS. Senator, I wonder if I could ask my Deputy Commissioner, Jim Owens, to respond to that question?

Senator GRASSLEY. Yes.

Mr. OWENS. Senator, it could be a variety of things. It could have involved a review of an integrity issue relating to funds where we receive lots of checks in the mail. It could be an internal audit for an integrity check from the East Coast to the West Coast.

It could have also covered a particular procedure in an examination as to how that procedure was being carried out by our employees—by the revenue agents, by the managers, and by the execu-

tives—in following the national office policy. Those 60 nationally coordinated audits that we referred to are done for two reasons. One is to determine whether or not the Commissioner's policies are being carried out by the field in their day-to-day operations; and the second reason is to determine whether or not there are better ways to do that.

And then those recommendations are made both to the local people and also directly to the Commissioner's office.

CASES REFERRED TO INSPECTOR GENERAL DURING FISCAL YEAR 1986

Of the 60 internal reports that went to the Inspector General, approximately 30 dealt with review of processing returns and documents, collection or examination procedures and communications with taxpayers; 14 dealt with review of procurement or imprest funds policies and procedures and the remaining 16 covered a broad spectrum of areas within the Service. A list of the 60 cases referred to the Inspector General is attached.

Date of Report	Title
11/22/85	Review of the Los Angeles District Small Purchases Imprest Fund (Ref. # 95113
01/24/86	Selected Payroll Activities at the IRS Data Center (Ref. # 060111)
02/07/86	The Effectiveness and Efficiency of the Procurement System in the North Atlantic Region (Ref. # 66011
02/14/86	Establishing a Contract Administration Program in the Internal Revenue Service (Ref. # 06047)
04/02/86	Review of Procurement Practices in the Buffalo District (Ref. # 66034)
04/30/86	Review of Security and Use of ADP Equipment in the Midwest Region (Ref. # 36026)
05/30/86	More Effective Managerial Controls and Coordination with Customer Functions are Needed in the National Office Contracts and Procurement Branch (Ref. # 06245)
06/13/86	Review of Small Purchase Imprest Fund in the Regional Office (Ref. 66023)
06/24/86	National Computer Center Small Purchases Imprest Fund (Ref. # 06251)
07/02/86	The Small Purchases Imprest Fund in the Cleveland District (Ref. # 46052)
07/18/86	Review of Procurement Practices for Contract Labor Services in the North Atlantic Region (Reg. # 06172)
07/18/86	The Efficiency of the Internal Revenue Service's Administrative Accounting System Can Be Improved (Ref. # 06172)
07/25/86	IRS Compliance With Information Return Filing Requirements (Ref. # 06272)
02/12/86	Review of the Regional Inspector Investigative Imprest Fund and Special Moneys Transactions - Southeast Region (Ref. # 06133)
03/14/86	Regional Inspector Investigative Imprest Fund and Special Moneys Transactions in the Southwest Region (Ref. # 06193)

Date of Report	Title
10/22/85	Improvements Are Needed to Enhance the Effectiveness of the Foreign Information Document Program (Ref. # 05276)
10/31/85	Recovered Mail from Santa Ana Site - Laguna Niguel District (Ref. # 95134)
12/02/85	Evaluation of Internal Controls and Accounting Systems Under the FMFIA for the Year Ended September 30, 1985 (Ref. # 06071)
12/09/85	Review of the IRS Audit Resolution System (Ref. # 06091)
04/29/86	Review of the Service's Abusive Tax Shelter Detection Program (Ref. # 06118)
04/30/86	Service Programs Are Not Effectively Promoting Taxpayer Compliance (Ref. 06104)
09/11/86	Review of Imprest Funds in the San Francisco District (Ref. # 96066)
09/10/86	Taxpayer Service Expanded Adjustment Authority in the Detroit District (Ref. # 46062)
09/16/86	Review of the Taxpayer Service Division's Responsiveness to Taxpayers - Phase II (Ref.# 06265)
09/16/86	Inventory and Management Controls in the Adjustment/Correspondence Branch (Ref. # 16033)
08/27/86	The Service Should Take Steps to Improve Compliance with Return Filing Requirements (Ref. # 06301)
09/12/86	Review of the Automated Collection System (Ref. # 06286)

Date of Report	Title
10/02/85	Improved Refund Review Procedures Would Reduce the Number of Erroneous Employment Tax Refunds Issued (Ref. # 6505R1)
11/01/85	Improving the Returns Processing Activity in the IRS (Ref. # 060213)
12/19/85	IRS Processing of Interest Free 1984 Individual Tax Refunds (Ref. # 06063)
12/31/85	Special Review of the Service's Control Over the Processing of Tax Returns and Documents (Ref. # 060512)
01/24/86	Management Controls in the Service Center Computer Branch Need to be Strengthened (Ref. # 061210)
02/13/86	Review of Account Adjustment and Manual Refund Controls in the New Orleans District Problem Resolution Program (Ref. # 16026)
02/14/86	The Mid-Atlantic Region Needs to Better Implement Their Systems Design to Identify, Communicate and Resolve Processing Problems (Ref. # 86012)
02/25/8	Improving the Quality of Notices in the Internal Revenue Service (Ref. # 060812)
04/01/86	Review of the Taxpayer Service Division's Responsiveness to Taxpayers (Ref. # 06142)
06/19/86	Further Strengthening of Controls Over the Service's Federal Tax Deposit Processing is Needed (Ref. # 062210)
06/25/86	Follow-up Review on the IDRS Terminal Replacement Plan (Ref. # 06202)
07/02/86	Alternatives for Reducing and Resolving Unpostable Transactions (Ref. # 9604R2)
07/10/86	On-Line Review of the Design and Development of the Realtime Input System (Ref. # 06151)
08/05/86	Review of the Service Center Upgrade of Mainframe Processing Systems (SCUMPS) Design (Ref. # 06182)
08/12/86	IRS Test of Commercial Lockbox Processing of Estimated Individual Income Tax Payments (Ref. # 36034)

Date of Report	Title
11/06/85	Review of Processing Refund Freezes for 100% Penalty Cases (Ref. # 96011)
11/13/85	Review of Controls in the Los Angeles District Examination Division (Ref. # 96125)
11/27/85	Review of Collection Activity on Large Dollar Accounts in the Indianapolis District (Ref. # 46011)
12/23/85	Review of Selected Areas in the St. Paul District (Ref. # 36018)
01/13/86	Review of Controls Over Tax Returns in Correspondence Examination in the Atlanta Service Center (Ref. # 16012)
01/15/86	The Service Needs to Reevaluate and Refine Its Use of Installment Agreements as a Collection Tool (Ref. # 060313)
01/31/86	Review of Collection Division in the Wichita District (Ref. # 56012)
03/19/86	Controls Over the Investigative Imprest Fund, Office of Assistant Regional Commissioner (Criminal Investigation), Central Region (Ref. # 46021)
03/21/86	Review of the Investigative Imprest Fund in the Phoenix District (Ref. # 56030)
03/25/86	Controls Were Effective Over Returns Selected for Examination in Central Region (Ref. # 46040)
03/31/86	Property of Seizure and Sale Activities, Detroit and Indianapolis Districts (Ref. # 46030)
04/08/86	Review of Controls in the Seattle District Examination Division (Ref. # 96022)
04/16/86	Controls Over Penalty Abatements Initiated by Revenue Officers (Ref. # 5602R1)
04/30/86	Service Programs Are Not Effectively Promoting Taxpayer Compliance (Ref. # 06104)
05/12/86	Review of the Criminal Investigation Investigative Imprest Fund (Ref. # 06238)
06/17/86	Improvements Needed in the Enforcement of Currency Transactions Reporting and the Use of Currency Data in Compliance Programs (Ref. # 061613)
06/19/86	Review of the Automated Collection System in Western Region (Ref. # 96033)
06/25/86	Review of Offers in Compromise - Western Region (Ref. # 96053)

Senator GRASSLEY. Were any of these significant cases reported to the Congress? You know, this Inspector General in Treasury does not have to report to Congress.

Mr. OWENS. I don't know the answer to that, Mr. Chairman and Mr. Grassley, because the reports would have gone directly from the Inspector General of Treasury. They would not necessarily have gone directly from us. We provide the oversight committees copies of the nationally coordinated audits. In the past, we have done it on an individual basis, and at times upon the request of the committees, we have provided them on a routine basis.

The third way we have done it is to provide them with an index on an annual basis, and let the committee select those that they would like to look at and review.

Senator GRASSLEY. Are investigations of employee misconduct reported to the Congress?

Mr. OWENS. No, they are not necessarily reported to Congress, but they are investigated by our internal security people who are part of the Inspector's office. The Inspection service is divided into two parts. One is internal audit which does the professional internal audits, and the other is internal security which handles the integrity and conduct issues.

Senator PRYOR. Senator Reid?

Senator REID. Thank you, Mr. Chairman. Mr. Commissioner, I think all of us here are aware of and in sympathy with the problems that we have with the underground economy, with the so-called ministries by mail, with the tax protesters. And I think that, without question, if you can point us in the right direction, we will be happy to work with you in that regard.

But we are not here—any of us here—to protect those people; and I know you are aware of that. I make that comment to you to indicate to you that we want to work with you, but you have to give us some direction in that regard because that does take some expertise that we don't have.

As far as asking direct questions, however: How many Problem Resolution Officers do you have? You said you are going to meet with them here in D.C.

Commissioner GIBBS. I am going to meet with them; I think there are seven that are coming in today. I will meet with all of the Problem Resolution Officers from around the country later; and Jack, we will have how many attending then?

Senator REID. How many are there? That was my question.

Mr. PETRIE. We will have one in each of our 63 districts.

Senator REID. So, there are 63?

Mr. PETRIE. Plus one in each of our 10 service centers, plus one in our seven regional offices.

Senator REID. So, approximately 100?

Mr. PETRIE. Yes, just under 100.

Senator REID. Also, I have some questions about the Service Ombudsman. Mr. Petrie, you report, according to the testimony of the Commissioner, to him. Is that right?

Mr. PETRIE. That is correct.

Senator REID. As I understand, and I haven't had the opportunity to closely review your comment on provision of the bill to have the—I have lost the word——

The Inspector General——[Laughter.]

Tell me your feeling, Mr. Petrie, about the Inspector General provision of our bill. Have you had an opportunity to look at that yourself?

Mr. PETRIE. Yes, I have read the provisions

Senator REID. All right. Tell me what your feeling is about that. There would be no conflict with you, would there, if there were an Inspector General involved?

Mr. PETRIE. Actually, with the current inspection system as it is now, we really work in two different areas. I work primarily in program problems; and if we have some problems that we identify as conduct, those would be referred over to that office.

Senator REID. So, there are two separate functions. Is that right?

Mr. PETRIE. That is correct.

Senator REID. And as far as you are concerned, you report to the Commissioner and the Inspector General would not. Is that right?

Mr. PETRIE. If that is the way the bill reads.

Commissioner GIBBS. I wonder if I might comment, Mr. Reid?

Senator REID. Of course.

Commissioner GIBBS. My feeling about the Inspector General provision is basically this, and it is borne of experience really over the last 10 years, while I was here before and at the present time. I do believe with our inspection service and with the Ombudsman, and with our new initiatives and new directions, that we are capable, within the organization, of providing the needed advice and assistance to taxpayers with respect to their rights and in protecting those rights. For that reason, I question the need for the oversight of the Inspector General.

But the other point that I would make to you is this: I recognize that, to some extent, that may be self-serving on my part; and so I would simply like to add a competing consideration to the discussion as you consider the Inspector General, and that is this. As I understand the provisions in the bill with respect to the Inspector General, it would give the Inspector General, under certain circumstances, the right to intervene in live cases where there was an allegation of some sort of impropriety of that sort.

I would ask, I would plead, that you think long and hard before you provide someone outside the organization with that kind of ability. I think one of the things that is very important to our tax system is for taxpayers to believe that the Internal Revenue Service will not be penetrated, and it will not be manipulated by any organization outside of it for political or any other reasons. And indeed, at times in this country, we have had allegations that entities—organizations—outside the Internal Revenue Service have attempted to invade the Internal Revenue Service, particularly to use our inspection organization, to subvert some of the rights of individuals. I understand that we can certainly protect against that. I understand that there are things that we can do, but that is something that I want you to know that I am very, very concerned about in terms of the appearance and the opportunity.

Senator REID. Mr. Chairman, I know my time is gone, and I will wait to come around again; but I would say, Mr. Commissioner, that all other agencies have an Inspector General and, in my opinion, I think the IRS would function better from a perception stand-

point. One of the things that I think we all have to be aware of, and I certainly want to stress this point: We not only with the IRS have to deal with what is bad but the appearance of evil—the appearance of bad. And I think that is what this bill does. In my opinion, it would give people more confidence.

If you look at some of your written testimony, as I did, you say that there are only 22,450 seizures a year. Again, that identifies only a small number of the overall contacts you make with the taxpayer; but still, that is about 100 seizures a day. That is still a lot because we are dealing with people. We are not dealing with major corporations.

Mostly, seizures take place—I would bet—with individuals, small people, not the companies or the types of people who are sheltering taxes and trying to avoid taxes, but small people like some of the letters that Senator Pryor read.

I would hope, Mr. Chairman, that there may be a brief opportunity as we come around again to ask some more questions.

Senator PRYOR. Certainly.

Commissioner GIBBS. Mr. Chairman, could I respond before we go on because I think Senator Reid has raised two good points, and I would like to comment on them?

Senator PRYOR. Certainly.

Commissioner GIBBS. One, in terms of whether the Internal Revenue Service is somewhat unique in comparison to other organizations, I would like to submit that the IRS is somewhat unique due to the disclosure laws that we have in the Internal Revenue Code, the intent of which is to protect the confidentiality of the very, very confidential information being submitted to us. Those disclosure laws, in my experience, are somewhat unique to the Internal Revenue Service because of the nature of the job.

And what I am trying to suggest is that, with the Inspector General or an organization outside, you at least have a competing consideration from a taxpayer's standpoint as to whether the information will be kept confidential and whether the organization will use the information in an appropriate way.

The second comment that I would make is with respect to the seizures. Seizures are obviously one of the most severe and intrusive types of actions that we can take. At times, they are important; and in looking at those statistics, one of the things that I think you should know is that we estimate—and we don't have specific figures because we don't keep these figures, but we estimate—that more than half of those seizures deal with situations where owners of businesses have withheld taxes from their employees which belong to the Federal Government and then have not paid those taxes over to the Federal Government.

And when we get into the discussions with respect to installment agreements, quite honestly, Mr. Reid, from my experience as a practitioner and as a tax administrator, usually that is the last ditch type of thing. It is only when they are in dire straits do they begin to really use the trust fund proceeds because they have no other alternative. So, when you start talking to them about installment agreements, usually they don't have the cash flow to pay the trust fund taxes that are going to come due plus the back taxes that are owed. Oftentimes the reason that we are compelled to go

forward with seizures is that, if we don't do so, then the taxpayer is in the situation of having no alternative but to continue to use the money that actually belongs to the Federal Government to try to keep the business afloat.

Senator REID. I won't respond to that.

Senator GRASSLEY. Mr. Chairman, as I have heard the Commissioner speak here, everything he says is very legitimate; but they have also been things that we have considered in our legislation. We don't require the disclosure of anything that any other law prevents from being disclosed.

In regard to whether the Inspector General would get into the internal operations of a bureaucracy, we don't allow the Inspector General to question legal judgments or get involved in legal judgments. And we do not allow the Inspector General to get involved in the determination of policy. And those are all things that he has expressed, but our legislation addresses those concerns.

Senator PRYOR. Our bill takes care of those concerns.

Senator GRASSLEY. So, you should not have any fear from our legislation.

Commissioner GIBBS. Senator Grassley, could I just respond by saying that I understand the lines that we are drawing with words. I am concerned, and I would be glad to explore the concerns with you; but I am concerned as to where a legal judgment and a policy judgment starts and stops and where the practical judgment of whether or not you take a particular action and examination begins.

Senator GRASSLEY. We asked for access to that information and were told we could not get it. So, that is the difference between an Inspector General who has administratively been set up and reports or does not report, as he sees fit, as opposed to a statutory Inspector General who must report some things to Congress. What we are basically after here, Mr. Commissioner, is just information, nothing more.

We have a constitutional responsibility not to interfere in the Executive Branch of the Government.

Commissioner GIBBS. And Senator, let me say as well that I understand your concern. What I would like to do is see if we could find some ways in which we could communicate. For example, I welcome what we are doing today; and that is the oversight that is being exercised by this subcommittee. These are ways that we can communicate.

In addition, we already have statutorily authorized ways in which we can communicate with the Joint Committee that also has oversight over us. I am not suggesting that it is not important to protect taxpayers' rights or that there are not mistakes and problems that arise. What I am suggesting is that there are things in place and we can certainly talk about whether we need to enhance those from the standpoint of the Problems Resolutions Program capabilities and from the standpoint of people's awareness of the opportunities that they have from a management standpoint, problem resolution standpoint, and Inspection standpoint.

All I am trying to say is that I think there are other ways that we can address this, and I would at least like to have that dialogue as you consider things like the Inspector General, GAO, and so on.

Senator PRYOR. Mr. Commissioner, of the 18 Cabinet level departments in our Government, two of those departments do not have an Inspector General created by statute. One is the Department of Justice; the other is the Treasury Department. I think we are very cautious about granting new powers to anyone in the Federal Government, and we would certainly be cautious in this instance to grant new powers to an Inspector General created by statute and empowered by the Congress to be an advocate for the taxpayer.

I have no disrespect whatever for Mr. Petrie, but I will be honest. I guess confession is good for the soul; I didn't know until January that we had the Problems Resolution Office in the IRS. I hate to admit that, but how many other taxpayers don't know it? Are taxpayers advised about a Problems Resolution Office?

Commissioner GIBBS. Indeed, Mr. Pryor, they are; and I would like to submit for the record materials that we provide taxpayers concerning the Problem Resolution Program.

[The prepared information follows:]

PUBLICITY FOR PROBLEM RESOLUTION PROGRAM

The Problem Resolution Progam (PRP) is publicized in a variety of ways—it is discussed in the IRS tax packages that are sent each year to individual taxpayers, in IRS Publication 17, Your Federal Income Tax, and Publications, 556, Examination of Returns, Appeal Rights and Claims for Refund, and 586A, The Collection Process. Copies of the appropriate pages from the Form 1040 tax package and Publication 17 are attached. PRP is also publicized through TV and radio announcements and articles in newspapers and magazines. PRP posters are displayed in IRS public contact offices and are also placed in other government offices. Problem Resolution Officers meet regularly with tax practitioner groups, Congressional staffs and other outside groups to explain and publicize the program. In addition, PRP posters are placed in IRS work areas to remind employees of their responsibility to identify cases meeting criteria so they can be referred to PRP. In fact, while there has been and continues to be considerable external publicity about PRP, the majority of cases will result from IRS employee referrals.

In November, 1986, the Service launched Operation Link—a new cooperative effort between our PRP Offices and tax practitioners. A new publication (Pub. 1320) entitled Operation Link was developed which explains the Problem Resolution Program and when practitioners should contact PRP offices. It also provides the addresses for all district and service center PRP Offices and the telephone numbers for the district PRP Offices. Copies of the publication and a cover letter explaining Operation Link were sent to the following organizations: the American Institute of Certified Public Accountants (AICPA), the American Bar Association (ABA), the National Society of Public Accountants (NSPA), the National Association of Enrolled Agents (NAEA), the National Association of Income Tax Preparers (NAITP), and the American Payroll Association (APA). Subsequently, copies of the publication have been sent to the Tax Section of the ABA and to the American Society of Pension Actuaries. Publication 1320 has also been widely handed out at liaison meetings with tax practitioners around the country.

Senator PRYOR. If we have a Problems Resolution Office, and all 100 officers are good people (and I assume they are), why is it that I am getting 100 letters every day and 300 phone calls every day and they are not going to you, Mr. Petrie? I mean, they are coming to us as a last resort.

Commissioner GIBBS. Mr. Chairman, one of the things that I would like to address with you are ways to give the Problem Resolution Officers more visibility, and to communicate that better to the taxpayers.

I understand your concerns in this regard, and I think they are legitimate.

Senator PRYOR. Mr. Commissioner, I will use a personal situation as an example. If I had a tax problem and I knew that I was in some difficulty, I don't know that I would call Mr. Petrie up and tell him that I have a problem. I don't know that I would call him because I might have a fear that Mr. Petrie would turn me over to the collection and seizure bureau of the IRS or that he would do something else to me. People are afraid of the IRS, Mr. Commissioner, and they don't know what a nice fellow Mr. Petrie is.

I am just like Senator Reid and Senator Grassley. Over this last recess in Arkansas and in our respective States, I had no idea—none whatsoever—that this legislation that we have now introduced would touch a raw nerve out there in our population like this one has. I mean, people from all walks of life would come up and say: "I wanted to call you, but I was afraid to. I was afraid that somehow the IRS might find out about me or hear about me." I don't think that is the kind of tax collection we need.

Commissioner GIBBS. Mr. Chairman, we are not looking for fear. We are not looking for love. We are looking for respect and confidence. I have tried to at least outline some things today that, in terms of things that we are doing with our people, will attempt to meaningful address some of the issues that you are raising. I can tell you this. As the Commissioner and as a former practitioner, people do call on Problem Resolution, and they call on them extensively; and they are not afraid to do so. And the results are very, very good.

Senator PRYOR. Mr. Petrie, are there any additional powers that you would like to have?

Mr. PETRIE. I currently have the power to stay an action, and we use it frequently.

Senator PRYOR. Do you have the power to issue, say, a stop order if you feel that a taxpayer has been abused?

Mr. PETRIE. Absolutely.

Senator PRYOR. And how many times have you invoked that power?

Mr. PETRIE. We really don't keep track of them, but——

Senator PRYOR. I want to know how many times your office has invoked a stop order when you feel that a taxpayer has been abused.

Mr. PETRIE. Over a period of years, if you are talking about me personally, I would say probably a couple dozen or three dozen times.

Senator PRYOR. Thirty six times maximum?

Mr. PETRIE. Yes. I don't get that many direct telephone calls, although I do talk to a lot of taxpayers.

Senator PRYOR. Out of 100 million taxpayers?

Mr. PETRIE. But our Problem Resolution Officers throughout the country do the same thing, and last year we handled about 550,000 cases; and I would say in one way or another, probably some stop action was taken in each of those. Only a couple hundred of those actually involved the seizure of assets that the taxpayer had.

Commissioner GIBBS. Could we give you a submission, Mr. Chairman, on this question, to give you additional information?

Senator PRYOR. I would appreciate that. I think that is very key to this part of this legislation.

Commissioner GIBBS. I do, too.

[The prepared information follows:]

TAXPAYER OMBUDSMAN AND PROBLEM RESOLUTION PROGRAM INTERVENTION IN CASES

In fiscal year 1986, the Problem Resolution Program received 550,000 inquiries. This compares to 506,000 in Fiscal year 1985 and 377,000 in Fiscal year 1984. The majority of the inquiries deal with service center related or tax account related problems. Approximately 10 percent dealt with Collection problems and 6 percent with Examination concerns. Specific records or counts of "stop actions" are not kept, although in instances where an enforcement action is either imminent or already effected, further action is held in abeyance until the case is reviewed by management officials and a determination made as to correctness of our action. The Taxpayer Ombudsman estimates that he personally requests action to be delayed or stopped in approximately 30-35 cases over the period of a year. Requesting a release of levy or delay in issuance of a levy is frequently made by field Problem Resolution Officers.

Senator PRYOR. I have one final question for Mr. Petrie: In a situation where a taxpayer goes to a Problems Resolution Officer—say in Little Rock, Arkansas or Memphis, Tennessee or wherever—is he or she ensured that whatever stated to that Problems Resolution Officer will not be used somehow against that taxpayer?

Mr. PETRIE. I am not sure how to respond to that. I think we would have to advise the taxpayer of the best way to handle that particular situation and of their rights.

Senator PRYOR. Do you advise them basically of their Miranda rights—that whatever you say may be held against you?

Mr. PETRIE. No, we do not get involved with Miranda warnings, Senator.

Senator PRYOR. Do taxpayers know their rights?

Mr. PETRIE. We try and advise them of their rights.

Senator PRYOR. Are taxpayers discouraged from bringing an accountant or an attorney to an interview or to an audit?

Commissioner GIBBS. No, they are absolutely not, Mr. Chairman. I would like to give you copies of the written materials that we give to taxpayers in connection with examination and collection to submit for the record. It is attached to my statement, and in those materials you will see that the taxpayer is advised that they have the right to be represented. The only thing we require, if the representative is going to be there without the taxpayer, is a power of attorney or a disclosure form. If the representative is with the taxpayer, we do not even require that.

I would also like to read something; this is with respect to a prior question.

Senator PRYOR. P-r-i-o-r or P-r-y-o-r?

Commissioner GIBBS. Oh, I am sorry. P-r-i-o-r, Mr. P-r-y-o-r. [Laughter.]

This is a quote from the materials that we send to someone when we send them a collection notice, and there is a specific provision that is headed in bold letters: Problem Resolution Program, PRP. The PRP is designed for taxpayers who are unable to achieve a resolution to their tax problems through the avenues of review explained in this booklet. To use this service, you should contact the Problem Resolution Officer on our toll-free telephone system or visit him or her in our District Office.

And that is in the materials that are given with each collection notice.

Senator PRYOR. Now, on the subject of toll-free calls, just a few days ago the GAO said that IRS answers the taxpayers wrong 22 percent of the time. Did you respond to that GAO report?

Commissioner GIBBS. I have, indeed, and what I have been saying, Mr. Chairman, what was tested, was the response that the IRS telephone assisters were giving to 21 specific tax law questions. We handle about 60 to 70 million contacts in Taxpayer Service a year. Two-thirds of those have nothing to do with questions about tax law.

They have to do with account-related questions or forms, publications and that type of thing. The remaining one-third deal with the tax law, and that is where the 21 questions asked in the test were concentrated. If you exclude from the 21 questions three of the questions, then we had an accuracy rate of between 85 and 90 percent; and two of the three questions basically involved things that we had not covered in prior training courses: The W-4 issue, which was new this year, and also the Tax Reform Law, which frankly we are beginning to do that training now, but it really was not applicable to the 1986 filing season this year.

Now, we looked at the questions ahead of time; they were fair questions. I have already expressed that I am concerned and not satisfied with the responses, but I would like to set it in the context that these are a relatively small part of what we do in taxpayer service, and overall our accuracy rate is far higher.

Senator PRYOR. Senator Grassley.

Senator GRASSLEY. Before I leave, I need to have your comment, Mr. Gibbs, on this testimony that we have had for a long period of time but even repeated in the last week or so at our last hearing where, even despite the fact that national policy is against judging and evaluating IRS employees on their high production and high seizure and all those things, you know the feeling out there is that it is a fact of life, that that is the only way you are going to get promoted—if you have good statistics.

Commissioner GIBBS. Mr. Grassley, I think that the best way that I can answer that is to recognize the fact that I can say all I want to as to what I think the policy is. I can talk to Mr. Coleman and the other seven Regional Commissioners; we can talk to the District Directors. But people's perceptions are part of the things that we are going to have to continually deal with when we are in an area where the principal function of the person is to deal with collection problems.

Now, I tried to spell out in my opening statement and in my testimony what we are doing to address, at the working level, the perception as to what is important if you are a collection officer. We are trying to address it in the way we recruit people, in the way we train people, and in the way we promote and pay people. One of the things that I would like to ask Mr. Owens to do is to prepare for a discussion with you as to what are the factors that we use in promoting and increasing the pay of our collection officers and provide the materials that he is going to be referring to as a submission to you so that you can see what we actually use when we increase the pay or promote our collection officers.

Senator GRASSLEY. Yes. Consider as you answer, though, that we have had former employees of the IRS state that this is the way promotions and pay raises are determined from within. I mean, I said perception, or maybe you said it for me; and I don't disagree with that, but we have also had from a practical standpoint people tell us that this is the way the system works—people who have been on the inside.

Commissioner GIBBS. Yes.

Mr. OWENS. Senator Grassley, I have heard those comments, and I looked at them with a great deal of interest when they appeared in the hearing last week. I have been in this business now for 28 years, and I continue to hear that. We continue to do everything we can to try to eliminate that perception, and we do that through the managers. We have nothing in writing that I am aware of, and we have gone back and researched the policy all the way from the written policy that was put in place about 25 years ago, that has been revised somewhat over the years, but the content and the meaning has not changed substantially from the time in the early 1960's when it was put into place.

There are factors that we look at for promotion, as in any large organization that tries to decide who to promote and who will not be promoted at times.

Let me just talk about four or five of those rather quickly. Workload management. The documentation of what the taxpayer has said and what is said and what is communicated. The application of collection skills and investigative techniques. Now, these are collection officers, and ones that were referred to in the testimony last week.

Senator PRYOR. Excuse me. State that one over again.

Mr. OWENS. Utilization of the collection tools. Communication is a factor. Protection of the Government's interest is a factor, because all of these people have a basic responsibility to protect the Government's interest and, at the same time, protect the rights of the taxpayers that they are dealing with and to communicate to them what their rights are and what their responsibilities are at the same time.

Now, we also go a step further, and we decide which one of those factors—and I haven't given you all of them, are very critical, and which are not as critical in terms of performance. One of those that is listed as critical is utilization of the tools of the collection process. Another one that is critical is communication. Is there written communication? Is there oral communication? Is a presentation made the taxpayer in a courteous and professional manner? There are reviews made by the group manager and required to be made of the cases, as to how effectively Revenue Officers utilize their time, and the quality of their use of collection tools.

And let me add that one collection tool is an installment agreement, and we had almost a million of those made last year, some 670,000 installment agreements were made where people could pay their taxes over a period of time. That is one of the collection tools. Another collection tool is the one that causes so much emotion, and that is the seizure of assets.

Senator PRYOR. You had 25,000 seizures last year, but you also had one million levies. What would that be against?

Mr. OWENS. That would be against bank accounts or accounts receivable. Now, in this process of an evaluation, I think that people will always, hopefully, take pride in what they do and how they do it, both as individuals, and as professionals.

They can never make someone happy when they are collecting a tax. It just doesn't happen. The best we can hope for is that they leave the taxpayer with an understanding that they have been treated fairly and that the case has been handled on a professional basis; and even though they don't like the results, they have some respect for the person as well as the agency. That is the effort that we try to put forth. That is the effort we try to measure; but in doing so, the majority of the people take pride in their work, I think, and routinely look at what they do. And they probably look at the results of what they do in terms of dollars. I would not sit here today and tell you that we don't have people who don't know how much they personally have collected because they do know. Many of them do but many of them don't. But collecting tax dollars is what they do, day in and day out; and having the responsibility to do that, they tend to internally measure that.

There is no way that I can keep that from happening. There is no law that can be passed. There are no provisions that can be put in our Commissioner's guidelines or procedures that will stop that; but it does put the burden on the Commissioner's office, on the Regional Commissioners, and on the managers, all the way through our organization, to routinely work with our people to try to continually reassure them that we are not measuring them on dollars collected or seizures made.

And at the same time, when we find that occurring, we move to stop that and prevent it in the future.

Senator PRYOR. Thank you, Mr. Owens. Senator Reid.

Senator REID. Thank you, Mr. Chairman. In listening to this testimony today, I am struck with a couple of things. One is that it seems that you have very few objections to the bill that we have. You object to it legislatively but not the intent of what we are trying to accomplish. And I would suggest—and I do want the ability to review closely that which I just received, which is the Internal Revenue Service comments on our legislation—because I do have some questions about that.

I haven't had time to look at it closely, but for example, people should not be promoted on the basis of how much money they collect. We all agree to that. There were hearings held previously, and Senator Levin, for example, asked some questions about this. And at that time—in 1980—four IRS agents came in and testified that promotions were based on how much money was collected; and of course, the testimony at that time from the Service was that that would be stopped.

We are here seven years later, and now we have Smith and another man who was on Nightline who testified that that is still taking place. In my opinion, this should be put into law; it would stop people from having to interpret manuals and things of that nature. In addition to that, I am looking at some of the criticism you have regarding one aspect of our bill which was that you can't conduct investigations into or surveillance over the beliefs or associations of an individual organization. And there is written criti-

cism on that to the effect that you wouldn't be able to look at tax protesters.

Well, I think that that could be easily put into the law. You could still have that authority, but the broad, broad authority that is in the law that gives people concern wouldn't be there any longer. You could still look at organized crime. You could still look at tax protesting organizations.

What I am trying to say is that it would appear to me that it would be good for the Internal Revenue Service—and we all agree, President Reagan agrees, and people before him—which has a real bad reputation. I think if we had something like a Taxpayers' Bill of Rights, it would help create confidence in the system because, as you indicated in your oral testimony, this is a voluntary compliance system that we have. I tried that on at home a few times, and people chided me that it isn't; but we know that it is a voluntary system.

So, my point is that I think a closer review of this legislation from a positive standpoint would allow us both—hat is, the Legislative Branch of Government and the Executive Branch of Government—to make some headway and put some of this into law and I would hope create the intent that is there on both sides.

Commissioner GIBBS. Senator, I wonder if I might comment on that?

Senator REID. Surely.

Commissioner GIBBS. I suppose one of the things that I have been trying to suggest in my discussion with you this morning is that indeed you are right with respect to a concern, a common concern, about some of the issues. I mentioned that in my opening statement. A desire to address problems and the causes of the problems and seek solutions.

I guess one of the things that I would like to explore with you on many of these points—and perhaps there are some where we would have an agreement with respect to the legislation, is to suggest that within the organization could come up with statements that we could make available, and things that we could do. It seems to me that if we, as an agency, act, rather than having it imposed on us, if we are the ones that are basically doing it and then trying to find ways to communicate that within the organization—because it is ours, not because it is something that Congress has passed—then we may really deal fundamentally with the causes of the problem. I honestly don't see that passing a law and saying that the organization will not promote or pay based on production when we say we are not doing that will solve anything, all that will do is create a situation where we can argue about it.

I would like to see if we could come up with something to really address some of the problems that are out there.

Senator REID. Mr. Commissioner, what I think would be great is if there could be a Taxpayers' Bill of Rights. Now, I would give strong consideration to maybe the IRS coming up with their own version of it. For example, I think that we should be able to record—we, the taxpayers, should be able to record—the conversations that the IRS employees have with us. We have a multitude—too numerous to mention—of people saying they told me this, and another agent came in and said they had no authority to do that. I

have already sold my home; I have taken a second mortgage on my home. What am I supposed to do now? They have changed the rules in the middle of the ball game.

Commissioner GIBBS. Senator, we already have that and I would be happy to provide copies of it; I think it is attached to my testimony. We already have a policy, in writing, that the taxpayer in an examination or a collection action can record the conference.

Senator REID. All right. I think the point I want to make in closing, Mr. Chairman——

Senator PRYOR. Go ahead, Senator Reid.

Senator REID. I want to submit questions in writing to the Commissioner's comments on our bill. I think—at least the way I am hearing things here—that the intent of both is the same. Now, I have no problem with the law incorporating some of these comments; but I think, rather than have this as an adversarial process between the Commissioner and the Congress, we should be able to come up with something that meets the demands of these hundreds and hundreds of people—I won't even say demands—inquiries, pleas—p-l-e-a-s. They need some help. To create confidence in the system, I think that is what we are trying to do because confidence in the system isn't there; and that is indicated by my trip home.

You know, I wanted to talk about the spying situation going on in the Soviet Union. I wanted to talk about the deficit. I wanted to talk about my several bills. No one wanted to talk about that. Every place I went, the only thing they wanted to talk about was the Taxpayers' Bill of Rights, saying: Boy, that is right on; you have got to do something about that; that is not fair. Do you know what they did to me? No, I don't know. Anyway, case after case, and it is usually the small people that come to us; and I say small in the sense of somebody who has lost a restaurant, somebody who has lost a job.

So, again, I want to end my statement by saying, Mr. Commissioner, I think a lot of the things that we accomplish on our level and that the Executive Branch accomplishes on their level is by the demeanor of the people trying to do what they are doing. I, again, am impressed with the fact that you, the leader of this organization which is held in disrepute, are a person who, by demeanor and perception—at least as far as we have been able to develop in these several hours we have been here—is one of a positive nature. And I think that is good for the organization, but we have to get a little bit beyond that and try to put something more in the mechanical means by which we are going to accomplish this intent that we both have. Thank you very much, Mr. Chairman.

Senator PRYOR. Senator Reid, I had to leave the room, and I am sorry I missed your line of questioning; but I think some of your questions related to the internal operations of IRS. And when we get to that area, Mr. Commissioner, it raises a decision that was handed down in the Third Circuit Court of Appeals. This illustrates why I am very troubled about IRS taking the position that, if you can make these changes internally, everything may be all right. This is the *Lojeski* case, and it is in the Third Circuit Court of Appeals. I won't cite it right now, but I will cite the court's ruling in this case.

The appellees do not dispute that Mrs. Lojeski was deprived of property within the meaning of the Fifth Amendment. Rather, they argue that the IRS Manual establishes only an internal operation procedure and not a constitutional due process standard. The court erred, they say, in equating the internal operating procedure with the constitutional standard of due process of law.

So, basically, what the Third Circuit Court held was that if IRS agents don't adhere to the internal operational procedures, the manual and the rules, this doesn't constitute a violation of the right to due process. That is how I interpret this particular case.

And that is why we think that by statute we can define these things very clearly. We can define the role and the powers of the IRS, and also the safeguards for the taxpayer.

Commissioner GIBBS. Mr. Chairman, let me say that we do not condone, and indeed I condemn, both personally and as the Commissioner, any sort of deprivation of rights that are guaranteed by the law, either by the Constitution, statute or otherwise.

Also, I think that my statement is backed up with the Supreme Court's decision in the *Bivins* case which imposes personal liability on any Federal employee who, acting under color of office, deprives any citizen of rights in this country.

I am really talking about—in the discussion that I had with Senator Reid—something that was far more positive in the sense of trying to find a way to address the fundamental causes and issues, in terms that would give rise to changes in employees attitudes.

Again, I think, as we have repeatedly said, we agree on many of the fundamental issues. I think the employees of the Internal Revenue Service are dedicated, capable people; and the problem we are dealing with is something where that is important, but also something that concerns a small fraction of employees; and I hope we can deal with that effectively without legislation.

And I think the way to deal with the problem is to basically deal with internal procedures and attitudes that give rise to it; and that is what I was really trying to express today.

Senator PRYOR. Mr. Commissioner, I don't disagree with one thing you just stated. We are all trying to learn more about how the IRS works. That is a part of this process because, to be honest with you, it is like what Churchill said when he described the Soviet Union as "a mystery wrapped inside an enigma."

And we can maybe also describe the IRS that way because we don't know how the IRS operates. But somehow, your philosophy up here in Washington, D.C., isn't getting out there to the regional offices and to the offices that deal with the taxpayers on a daily basis.

We want to enact your philosophy into law. We want you to be able go out to your team 100,000 of you, and 8,000 more requested, and say here is the law, and here is how we are going to do it.

Commissioner GIBBS. Mr. Chairman, all I am suggesting is this: It has been my experience in dealing with people that, if the organization and the agency and the people themselves come up with an approach with standards and policies you stand a better likelihood of changing fundamental attitudes as well as the attitude of the minority than simply having something imposed on you from outside the organization. That is all I am saying.

Senator PRYOR. Mr. Commissioner, I am going to get into a broader subject. It is now 5 minutes until 12. We are not going to continue this hearing much longer, but I will say for Senator Reid and the other members of the committee that we would like to submit questions in writing. There are a lot of questions that we still have that we have not had time to ask. I think everyone in this country believes that if brought in for an audit, brought in for an interview, or challenged, a taxpayer has the burden of proving that he or she is innocent. Is that your interpretation of the law today?

Commissioner GIBBS. I don't think it is a question of innocence. The burden is on the taxpayer to basically show that they have reported all of their income and that they are entitled to the deductions and credits and other tax benefits that they claim.

Senator PRYOR. What about shifting that burden of proof to the IRS?

Commissioner GIBBS. Mr. Chairman, I can be consistent here because, before I ever put on the Commissioner's hat, as a practitioner I have addressed this, representing taxpayers and taxpayer rights. I don't think it is appropriate to shift the burden, and let me explain why.

In my opening statement, I mentioned that the essence of our tax system is that it is voluntary. Taxpayers have the opportunity, the right, and the obligation to prepare their own tax returns, to structure their withholding as they see fit, within the rules of the law. Now, once the taxpayer does that, and the withholding has been done, and the return prepared and submitted, the taxpayer has access to all of the information that indicates whether the return has been properly prepared.

I recognize that in a law that has been constantly changing, it is not an easy thing for the taxpayers to do. But the taxpayers in this country are given that opportunity—unlike many countries and States where the taxpayer is told by a Government what the tax bill is—to determine their tax bill and pay their taxes.

They have the information that shows whether that determination has been properly made. I submit, in that context, when the Service comes in to audit, then I think it is incumbent on the taxpayer—having taken the position, having made the decisions, and having access to the information—to bear the burden of simply showing that what was claimed in the way of income, deductions, credits is correct.

I don't think it is a matter of "guilty until proven innocent." I think it is simply a way of determining the correctness of the voluntary self-assessment system in the context of an audit. Furthermore, if you shift the burden of proof to the Government, I frankly think that it will lead to even more difficulties for us as an agency and for taxpayers because it will mean we will have to ask many more questions and, in effect, get into things in a much more intrusive way than we do in audits at the present time.

Senator PRYOR. Mr. Gibbs, you have just made a very good argument for one of the sections in the Taxpayers' Bill of Rights. That section relates to the granting of a power of attorney from the taxpayer to his or her CPA or accountant or attorney to go in and, for example, face the IRS during an interview. This is something that

we really hope that you will look at as the IRS Commissioner. We think it is very fair. To begin with, a poor taxpayer is called before the IRS, and it is like my going into a bank. I get nervous every time I even shake hands with a banker. [Laughter.]

I get especially nervous going into a bank because I never go in one unless I have to borrow money, and it is the same thing with a taxpayer. They are frightened, and they don't know how to react. I noted that we had an Eighth Circuit Court case just recently, and the court said that no due process right was violated in the IRS agent's refusal to allow the taxpayer to videotape an interview. That is another part of our legislation that we think would give some safeguards to the taxpayer, and we think it would frankly make that relationship much better.

Commissioner GIBBS. Mr. Chairman, we agree on both of those. In our internal rules and in the information that we send to the taxpayer every time we ask a taxpayer to come in for an office audit, or be available for our agent to see them, there is a provision that permits the taxpayer to be represented by a representative whether by an attorney, accountant, enrolled agent, or whoever.

There are times, Mr. Chairman, as I mentioned in my opening statement, where we would like, in the presence of the authorized representative, to ask the taxpayer some questions about facts that we think the taxpayer has peculiar and specific knowledge of; but we do not object at any time or in any way if that taxpayer wants to have a representative with him.

Senator PRYOR. We want to put that into law. We don't want it in some manual. We don't want in an internal ruling. We want it in the law so the taxpayer will know that he or she has that right.

Senator Reid.

Senator REID. No further questions, Mr. Chairman.

Senator PRYOR. We could go on and on. Mr. Owens, did you have something else?

Mr. OWENS. No, Mr. Chairman.

Senator PRYOR. Or Mr. Coleman? We have really not heard a great deal from you today. We would be glad for you to volunteer to walk into this thicket if you would like. [Laughter.]

Mr. COLEMAN. I guess facetiously I could say that I agree with everything my boss has said. [Laughter.]

Maybe I ought to let it go at that.

Senator PRYOR. Let me first make two personal observations. First, Mr. Commissioner, once again we are very, very appreciative of your very candid manner in coming before this subcommittee. We know that we have a piece of legislation that is awesome in its reform nature. It reforms the whole tax collection system to some degree. We know that you have been a practitioner out there, and we deeply appreciate your cooperation in working with us on this.

And I also want to personally thank you, Mr. Commissioner, for the way and the manner in which you responded to our W-4 hearing recently. You responded quickly, positively, and I want to express the thanks of this committee to you for doing that.

Now, Mr. Petrie, I want to apologize to you. I feel that I was a little roughshod with you a while ago, and I would like to apologize to you. I was a little exasperated, but we can get those figures for the record. I did not mean to badger you, but we sit up here some-

times and take advantage of a witness. I did not mean to take undue advantage of you, and so, please accept my apology.

Mr. PETRIE. No apology necessary. It goes with the territory.

Senator PRYOR. Thank you very much.

Commissioner GIBBS. Mr. Chairman, could I make one final request?

Senator PRYOR. Yes.

Commissioner GIBBS. And that is this. If you or any members of the subcommittee, or indeed any of your colleagues are receiving letters that are of concern, if you would care to share them with the Ombudsman, then we will be happy to try to address those problems in a reasonable way and not in a way where anyone need have any concern.

Senator REID. How big is his staff?

Mr. PETRIE. Large enough.

Commissioner GIBBS. I was going to say, Mr. Reid, in this area if we are sincere about what we say, we will find a way to do it.

Senator PRYOR. Mr. Commissioner, you say you will have 100 of these problem solvers in Washington this next week? I wish you would loan us about four of them just to answer the telephones in my office, and I know Senator Reid is going through the same thing. Maybe they could come over here and get a flavor of what we are hearing. I don't know whether you all hear as much as we do, and maybe you hear more.

Commissioner GIBBS. We hear from unhappy, dissatisfied customers on a daily basis, Mr. Chairman. By the same token, it does go, as Mr. Petrie said, kind of with the turf.

Senator PRYOR. We are not through holding hearings on this bill. We are going to have another hearing or two before we start seriously trying to move it through the process because we do need more facts, and we hope that we can begin really resolving some of these issues. Once again, we are very indebted to you for coming and for your candid manner. And our meeting stands adjourned.

Commissioner GIBBS. Thank you.

Senator PRYOR. Thank you.

[Whereupon, at 12:06 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

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March 26, 1987

William J. Wilkins, Staff Director and Chief Counsel
U.S. Senate Committee on Finance
Room SD 205
Dirksen Senate Office Building
Washington D.C. 20510

RE: Finance Subcommittee on IRS
Oversight on Taxpayers' Bill
of Rights

Members of the U.S. Senate Subcommittee:

This undersigned is an attorney at law and a certified public accountant and has practiced as such for 30 years and 40 years respectively. I have retired recently from the active practice of income tax law to some extent due to the obvious difficulty to serve my clients effectively in todays environment in the income tax field. This factor was only a minor one of many which hastened my retirement.

I believe that the most recent "tax simplification " act of 1986 is illustrative of the problem for the current tax practitioner.Not only do we have to comprehend a much amended Internal Revenue Code wich is changed annually, but we also must keep up with regulations, interpretations, private rulings, advice memoranda issued in ever increasing numbers and variety by the Internal Revenue Service. Also of course the Federal Courts have before them a great variety of income tax disputes at all times which do not always give uniform signals to guide the taxpayer and his advisors. These factors make it very difficult if not impossible for tax consultants who either practice alone or in small partnerships. Help at great expense is available through computer libraries accessible by telephone through modems. Some of these costs are beyond the ability of the small practitioner to carry.

The vast majority of taxpayers do need assistance in the preparation of their income tax returns. They need guidance as to legal requirements such as record keeping and retention. They are unsophisticated and bewildered. The practitioner has a great deal of difficulty translating tax laws into a language whichthese layman can understand and then follow and "comply" as this technical word is used by the IRS. The IRC should be classified in such a manner that sections dealing with about 90% of all individual income tax returns can be found in one place. Such sections should not be subject to change in language so that the lay public can get used to these requirements and understand and comply with them after a while. Such sections should deal only with income

items, deductions and exemptions which occur in these 90% of all returns and can be further limited to a maximum amount of adjusted gross income. It is better to leave the income tax laws unchanged for a long period of time and thereby give it stability than to attempt to appease every pressure group for "fairness" and "equity". More complicated income tax returns with larger incomes are usually prepared by the tax specialists and can therefore be subject to all the income tax laws which often unnecessarily complicate the preparation of such returns. The preparation fee should be deductible in arriving at adjusted gross income in recognition of the tax law complexities.

Tax preparers and their clients are unduly intimidated by the large number of fines, penalties and other costs arising from errors in the preparation of complex returns and the interpretation of laws about which reasonable men can and do differ. The burden of reporting the income should fall on the taxpayer but the IRS should carry the burden that the errors and differences of interpretation arose from the wilfull failure of the taxpayer to comply. While there are bad apples in any barrel, the presumption that the taxpayer acted in good faith should be preserved and the burden of wilfullness and/or negligence should be shifted to the IRS. Penalties should only be assessed against repeat offenders, when they show no inclination to follow the rules which they or their consultants can understand. In that regard consultants (preparers) should always serve as the representative of the tapayer and not be an agent for the IRS for the purpose of collecting income taxes or the enforcement of the IRC. The playing field should be level for both the taxpayer and the IRS and no dual loyalties should be required of the preparer. The IRS has slowly but surely become a small police state as far as the average taxpayer is concerned and compliance will suffer. But compliance is more effected by the complexities of the tax system than any other factor. Real simplification, especially for the small taxpayer, will greatly decrease the work load of the IRS, the taxpayer and their preparers. As long as the IRC is written with its current complexities, compliance is a hit and miss affair, which is patently unfair to the taxpayers who struggle to their utmost to prepare and file a correct return.

The IRS has in recent years totally eliminated human contact and response. It is now an invisible all powerful Orwellian monster, which is always correct and the taxpayer is a "cheat". The first contact is brusk demand for additional income taxes due, based on data which even sophisticated tax preparers have difficulty understanding. The IRS should note that it is employed by the people and must adopt its correspondence to their ability to comprehend. These notices should always supply a name, address and telephone number of a human, well trained, as a contact for the taxpayer or his representative. Computers can enable such IRS contact to have the information on his screen to enable him to answer questions, explain the notice and receive input from the taxpayer. Presently all a taxpayer receives is demand for additional taxes. Letters with information or explanation supplying data to justify taxpayer's position disappear into a vast "Black Hole" at the IRS center. Subsequent demands generated automatically by computers keep coming again and again to the taxpayer without any indication that replies have been made to the original demand. Taxpayer's letters go completely unanswered. Most practitioners therefore deal with IRS only by certified mail with return receipt requested and demand an acknowledgement to be returned as contained in the correspondence.

Public relations is terrible for these reasons. While human contacts with taxpayers are expensive, they are a necessity in order to preserve the dignity of the taxpayer and to induce him to compliance. Taxpayers are human and deserve much better than the IRS is willing to give. The number of laws, penalties, fines are a clear indication that the voluntary compliance system is breaking down. When the breakdown is complete, we will all face a totalitarian government, remote,hated, and avoided at all costs.

Tax preparers are also human. They try to advise their clients as best as they can. They attempt to understand and interpret the income tax laws and forecast the trendsof litigation attitudes of the IRS and other crystal ball gazing. In todays climate malpractice suits are initiated at the drop of any cause, fact, circumstance or whatever in order to shift the cost of tax compliance to the preparer, who is the "expert" and how could he not know the law, even in the face of 5:4 decisions by the U.S. Supreme Court. So the defense of the practitioner is to carry ever higher limits of malpractice insurance at ever higherpremiums, until he is finally forced to leave the practice of income tax law to braver souls in the face of such insurmountable odds so that he can practice accounting or law, other than tax, in peace and sleep at night.

Yes,taxpayers have rights. They can expect a tax law which they can understand or can have explained to them. Compliance costs should be reasonable. Fairness and service should be required from the IRS in dealing with the taxpayer as a human being.

Respectfully

Kurt R. Anker, human being

AMERICAN BAR ASSOCIATION
SECTION OF TAXATION

REPORT OF THE COMMITTEE ON CIVIL
AND CRIMINAL TAX PENALTIES CONCERNING THE ADVISABILITY OF
DECENTRALIZATION/REGIONALIZATION OF THE TAX DIVISION'S
REVIEW AND PROSECUTION AUTHORIZATION FUNCTIONS

Introduction

Decentralization or regionalization of the Tax Division's review and prosecution of criminal tax cases has been proposed as long ago as 1933[1] and as late as 1981.[2] These proposals have been rejected by Attorney Generals, and opposed by Assistant Attorney Generals in charge of the Tax Division, the Internal Revenue Service, and the American Bar Association's Tax Section. The history has been described this way:[3]

> From time to time, proposals have been made for direct referral of all income tax fraud cases by the Revenue Service to the United States Attorneys. Successive Attorney Generals have considered and refused such proposals on the ground that the vital matter of the Government's revenues should be subject to their close supervision. Equally cogent considerations of uniform prosecution policy and procedure have dictated rejection of direct referrals. It has generally been the experience of the United States Attorneys that they were relieved of intense local pressures by centralized prosecutive decisions.

In 1981, for example, the General Accounting Office (GAO) presented alternatives for revising the process for review of criminal tax cases, some of which called for the elimination of Tax Division review. The Justice Department responded to these alternatives, "Centralized and expert review is required to maintain evenhanded justice in this specialized and often treach-

erously complex area of the federal criminal law ... Tax Division review now provides this necessary centralization and expertise."[4] The Internal Revenue Service objected to the same Report's alternative proposals to eliminate Tax Division review,[5]

> More importantly, they would place primary or exclusive prosecutorial review in the hands of the U.S. Attorneys who typically have little tax expertise, have no clear understanding of the Service's national compliance program, and may not have a particular interest in criminal tax prosecutions.

The ABA Tax Section opposed the GAO's direct referral proposals because the present system of providing sequential (but differently focused) reviews of criminal tax cases "works well."[6]

As these responses to the GAO Report indicate, there are at least four reasons for keeping Tax Division review of criminal tax cases:

1. The ability of the Tax Division to apply a uniform prosecution policy and procedure;

2. The expertise of personnel in the Tax Division in handling criminal tax cases;

3. The avoidance of local pressures in exercising prosecutorial discretion in criminal tax cases; and

4. The present system works.

These reasons are not, by any means, exclusive or exhaustive, but they are the frequently articulated reasons in support of Tax Division review. The reasons are discussed more fully below.

DISCUSSION

1. Tax Division review enables the Internal Revenue Service and the Justice Department to apply a uniform prosecution policy and procedure.

Review of criminal tax cases by the Tax Division of the Justice Department is handled by its Criminal Section. Centralized review permits the attorneys in the Criminal Section to develop an expertise in criminal tax cases. It also enables management personnel to apply national policies in exercising prosecutorial discretion in criminal tax cases.

The policy of the Service's criminal enforcement program is to provide a balanced program of enforcement in addition to the development of successful prosecution cases.[7] To do this, the Service has a General Enforcement Program, to cover all types of taxes and violators in as many income brackets, occupations, businesses and geographic areas as possible to deter other potential violators.[8] Under the Special Enforcement Program, the Service identifies taxpayers who derive a substantial income from illegal activities, including major racketeers and those taxpayers with income from illegal sources or corrupt practices.[9] While the Service's Special Enforcement Program gets perhaps greater publicity, the General Program is given the highest priority by the Service to create the greatest impact in the compliance attitudes of taxpayers in general.[10] The Tax Division is well-versed in the Service's Criminal Investigation programs and cooperates with the Service in achieving the objectives of these and other national programs it has adopted.

The Tax Division has also developed policies over many years. These policies play an important role in the review process. For example, Tax Division policies provide that:[11]

(a) Offers to compromise the civil tax liability of a taxpayer who is a potential defendant in a criminal tax case will not be considered;

(b) The existence of a "true" voluntary disclosure will be a factor considered with other factors in determining whether or not to prosecute;

(c) The possibility that prosecution of a criminal tax case after a taxpayer has already been prosecuted and sentenced under state or federal law for a crime involving the same conduct will result in a dual prosecution, will be considered;

(d) The implications of the taxpayer's health in achieving the goals of the general and special enforcement programs will be considered; and

(e) Guidelines must be followed in disposing of a prosecution by a guilty plea.

It has never been suggested that these programs and policies will be eliminated. If decentralization is adopted, no procedure has yet been described, however, under which these general programs and policies will be uniformly implemented by local U.S. Attorneys' offices spread through the country. Even if some procedure is devised, in the view of members of the Committee, it will be unlikely that national programs and policies will be as

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uniformly applied by U.S. Attorneys' offices as they are by the Tax Division.

Support for the Committee's view is found in the fact that centralization is not unique to criminal tax cases. For example, the Justice Department has developed centralized review procedures in such areas as RICO and attorneys' fee forfeiture cases.[12] Obviously, review and decision-making would be "streamlined" in RICO and attorneys' fee forfeiture cases without Justice Department involvement; nevertheless, in these sensitive cases, centralization is considered to be necessary. There has been no data to suggest that centralized review is less appropriate in criminal tax cases than it is in these other types of cases.

2. Attorneys in the Criminal Section of the Tax Division have developed an expertise in criminal tax cases not shared in local U.S. Attorneys' offices.

Criminal tax cases have unique features in that they sometimes involve complex methods of proof requiring some knowledge of accounting and may involve technical provisions of the tax law as well. Criminal Section attorneys in the Tax Division are able to bring to bear a developed expertise in cases involving these special characteristics at the time when it is most important for both the government and for the taxpayer who is a prospective defendant in a prosecution. As attorneys who are knowledgeable in the "substantive" law of criminal tax prosecution and who are experienced trial lawyers in criminal tax cases, Criminal Section attorneys have a unique ability to make the final decision for the

government on the prosecution of a criminal tax case. It should be remembered that the judgment made at this point in the administrative process is not one merely to prosecute an individual. It is also the administrative decision that successful prosecution will advance one of the Service's national criminal enforcement programs and that the likelihood of a conviction is sufficiently high so as to justify the expenditure of government resources.

The expertise of Criminal Section attorneys is not shared in most U.S. Attorneys' offices. Most Assistant U.S. Attorneys do not have substantive background in accounting or the tax law, or the opportunity to develop that expertise in their term of service in the U.S. Attorneys' office. Unquestionably, there are individual instances, especially in the U.S. Attorneys' offices in major cities, of Assistant U.S. Attorneys who have some expertise in criminal tax cases. And we do not doubt that Assistant U.S. Attorneys can, with preparation, more than adequately handle a trial in a criminal tax case. But the isolated experience of Assistant U.S. Attorneys is not the issue. What the Task Force does question is the ability of an Assistant U.S. Attorney in most U.S. Attorneys' offices across the country to consider and make the administrative decision on whether the case forwarded to him will advance uniformly the national policies of the Internal Revenue Service in its criminal enforcement programs. It is the administrative decision-making ability of U.S. Attorneys' offices that is not likely to be so effective as the Criminal Section of the Tax Division.

Criminal Section attorneys who are removed from the activity of the local U.S. Attorney's office also have the time to make the requisite review and to give the prosecution decision, so important to the Government and the taxpayer alike, the consideration it deserves. Time is necessary in order to review a prosecution recommendation adequately. The special agent's report attaches witness statements and each document to be introduced at trial, so the files forwarded by the Service for review are frequently voluminous. The files containing what the Service believes is evidence supporting a criminal conviction must be scrutinized in order to make a decision about the sufficiency of the evidence. The Criminal Section attorneys look at the files not as investigators, but as trial lawyers. Part of their review is to see whether the evidence is legally and practically sufficient. Along with this review and a conference with the taxpayer's counsel, the Criminal Section attorney prepares a memorandum reviewing the issues and making a recommendation on prosecution.

The Assistant U.S. Attorney, on the other hand, is on the "firing line," committed to the hard and demanding job of prosecuting cases that have been developed in grand juries or referred by other federal agencies. The Committee does not have statistics to prove the point, but it is our experience that, in many U.S. Attorneys' offices, prosecution of criminal tax cases is delayed.[13] It is not unreasonable to ask how the U.S. Attorneys' staffs who are unable to handle prosecutions expeditiously will be able to process administrative reviews and prosecutions with any

more dispatch. Moreover, unlike the Criminal Section attorney, the "mindset" of that Assistant U.S. Attorney is on the prosecution of a case rather than on the administrative review process. The practical realities of life in a U.S. Attorney's Office make dubious, therefore, whether the Assistant U.S. Attorney will have the time to review a case file prepared by a special agent and to hold a conference with the taxpayer's attorney, as well as the ability to prepare a reasoned memorandum on the advisability of prosecution that takes into account the Service's programs and the Tax Division's policies.

3. Lawyers in the Criminal Section of the Tax Division are removed from local pressures.

By virtue of its location in Washington, the Tax Division and its lawyers in the Criminal Section are removed from local politics and pressures from the district in which a prosecution of a tax offense is to occur. It is generally agreed that Tax Division review provides a "healthy and much-needed insulation of the decision whether or not to prosecute a tax offense from local fear, favoritism or outright pressure."[14]

4. The present system works.

It is extraordinary that the procedure for the review of criminal tax cases that has worked so well is frequently questioned. But Attorney Generals and Tax Division and Internal Revenue Service officials, as well as the Tax Section, have all concluded that the system works well for the Government and for

taxpayers alike. Statistics on criminal tax cases show that the system is working well.

Selected CIR Case Activity Statistics
Fiscal Year 1979 and Fiscal Year 1985[15]

Area	FY 1979	FY 1985
Total staff years expended	4,304	4,434
Investigations initiated	9,780	6,065
Investigations completed	8,952	5,911
Prosecution recommendations	3,338	3,234
Average staff days per case	55	78
Total prosecution declinations	1,251	531
Total convictions	1,611	2,025
Taxpayers sentenced to prison	675	1,340
Average prison term (months)	15	38
Fines imposed (millions)	$5.1	$13.3

The above table reveals that from fiscal year 1979 to fiscal year 1985, (1) despite the Service's selectivity in investigations, with the number of investigations initiated decreasing from 9,780 to 6,065 (38 percent, (2) total prosecution declinations decreased from 1,251 to 531 (58 percent), while (3) total convictions increased from 1,611 to 2,025 (26 percent). The table also shows that the average prison term and the fines imposed increased during this period. National uniformity, which results from the Tax Division's centralized review, guidance, supervision and authorization to prosecute, has demonstrably translated into high quality cases and the impressive conviction rate whether by guilty plea or conviction by jury that the table reflects.

Two former Commissioners of Internal Revenue, Randolph W. Thrower and Johnnie M. Walters, opposed eliminating Tax Division review. Former Commissioner Thrower said:[16]

> Your letter regarding the threatened decentralization of the Tax Division is alarming. Pressures to this effect have arisen from time to time, principally from the Criminal Division of the Department of Justice in connection with the strike force activities. To date they have been successfully resisted, or, at least, the exceptions have been isolated. I think it would be extremely unfortunate for the Service and the Department to abandon review of proposed criminal action at the National level and the opportunity for a conference at the Department of Justice.
>
> Review in the Department has had the effect over past years of eliminating unsupportable positions developed in the field. The Department thus has relieved the Government from the prejudice of having a number of acquittals. In my view, one acquittal in an income tax case erases the deterrent effect of many convictions. The fact that an acquittal is publicized, and thus is really more newsworthy than a conviction, is taken by many people as confirming their prejudices that the Service is unreasonable and over aggressive in enforcing the Internal Revenue laws.
>
> Almost every criminal tax case is a major issue for the court, the counsel, the jury, and the media. It cannot be compared to the great volume of run-of-the-mill criminal cases handled by a Federal Grand Jury. Uniform enforcement of the Internal Revenue laws throughout the country has long been recognized as essential to the maintenance of the integrity of the Revenue System. Tremendous expense has been incurred by the Service over the years in order to achieve uniformity. It would be extremely unfortunate if, at this most critical point in testing the administration of the laws, i.e., in prosecuting a taxpayer for noncompliance, uniformity should be abandoned.

Former Commissioner Walters wrote:[17]

> Having spent the past 35 years practicing law in the tax field, both in and out of the government, I approach the subject objectively but with some fairly firm views. In my opinion, it is absolutely necessary (not just

> essential) that our tax system and the administration of the system be kept on a national basis. And particularly in the area of criminal prosecutions we must treat taxpayers (or potential taxpayers) as nearly alike as feasible. I am not prepared to say that under no circumstances should there be any decentralization, but I think that decentralization of functions in such a sensitive area should be undertaken only when the advantages are commanding and then only with clear and definite restrictions.

The Committee repeats what a Section Task Force concluded in 1981: the sequential review of criminal tax cases, including Tax Division review, works well. Decentralization will jeopardize the Service's national criminal enforcement programs. It will burden many of the U.S. Attorney's offices that lack the breadth, expertise and staffing to conduct the necessary thorough reviews. And it will open up opportunities for local inter-agency pressures and possible corruption to be brought to bear on the prosecution decision.

FOOTNOTES

[1] See, for example, Lyon, "The Crime of Income Tax Fraud: Its Present Status and Function," 53 Colum. L. Rev. 476 (1953).

[2] Comptroller General's Report to the Joint Comm. on Taxation, "Streamlining Legal Review of Criminal Tax Cases Would Strengthen Enforcement of Federal Tax Laws" (hereafter referred to as "GAO Report"), GGD-81-25 (April 29, 1981).

[3] U.S. Department of Justice, Tax Division's Manual for Criminal Tax Trials (Ch. 1, p. 3, fn. 1).

[4] Letter, December 31, 1981, Kevin Rooney, Assistant Attorney General for Administration, GAO Report p. 43.

[5] Letter, January 7, 1981, William E. Williams, Acting Commissioner of Internal Revenue, GAO Report, p. 55.

[6] ABA Tax Section Taskforce Report, GAO Report, p. 16.

[7] IRM, Policies of the IRS Handbook, P-9-18.

[8] IRM, Part IX, Criminal Investigation, 9152.

[9] Id. at 9153.

[10] Id. at 9161.1.

[11] See, Manual for Criminal Tax Trials, note 3, supra.

[12] U.S. Attorney's Manual, Section 9-110.200.

[13] Id. at Section 9-111.300.

[14] One former Assistant U.S. Attorney in the 1970s can recall the Chief of the Criminal Investigation Division and his Branch Chiefs and Group Managers attempting to exert extreme pressure on the United States Attorney and his Assistants to prosecute virtually all of the directly referred "preparer program" and "ten-percenter" cases. Although a number of those cases were weak, not adequately investigated and lacked the prospect of a significant likelihood of conviction, comments such as "lacking guts," "we are always here to help you," "without us you would not have made cases A, B and C," and "you are making us look bad in comparison to other IRS districts" were commonplace and seriously made. Conversely, pressures are sometimes applied at the local level on United States Attorneys to drop prosecutions recommended by the IRS which should be brought in the interest of a consistent, uniform policy.

FOOTNOTES

[15] General Accounting Office Fact Sheet to the Chairman of the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives dated November 1985 entitled "Tax Administration--Information on IRS Criminal Investigation Division."

[16] Letter, June 29, 1985, Hon. Randolph W. Thrower.

[17] Letter, June 18, 1985, Hon. Johnnie M. Walters.

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April 30, 1987

The Honorable Edwin Meese, III
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

The Honorable William F. Nelson
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Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

The Honorable Charles E. Grassley
United States Senate
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The Honorable Lawrence B. Gibbs
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The Honorable Daniel Rostenkowski
U.S. House of Representatives
Washington, D.C. 20510

The Honorable J. J. Pickle
U.S. House of Representatives
Washington, D.C. 20510

Gentlemen:

The review of proposed criminal tax prosecutions by the Tax Division of the Department of Justice is critical to the administration of the tax laws. We understand that the elimination of this review has once again been suggested although no real justification has been offered. The purpose of this letter is to register our strenuous objection to any substantial modification of the Tax Division's role in the processing of proposed tax prosecutions.

The members of the Chicago Bar Association, Federal Taxation Committee, oppose any attempts to remove or minimize Department of Justice review and authorization of tax prosecutions. We reassert the objections voiced by the Tax Section of the American Bar Association and the Tax Committee of the Federal Bar Association, Chicago Chapter and express our own concerns over this proposed change in policy.

Need for Expert Appraisal

The United States Attorneys need the expert appraisal of a prosecution file that the Criminal Section of the Tax Division gives them. The attorneys and reviewers in the Criminal Section bring together a unique blend of procedural skill and technical expertise; they are in frequent contact with the legal staff of the IRS Chief

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Counsel with respect to the technical positions being studied by the Service; they keep abreast of the civil tax positions being advanced in the Tax Court and by the rulings divisions of the IRS; they assure that the recommendation made to the United States Attorney takes into account the evidentiary requirements for a successful prosecution as well as the technical requirements for a nation-wide position to achieve consistency in the enforcement of the criminal tax laws throughout the nation.

National Consistency

If Department of Justice review is eliminated, national criminal tax policy will be determined by myriad United States Attorneys.

Our federal tax system affects to some degree practically every person in the United States. Even with its heavy reliance on standard manuals, operating instructions, technical advice, and internal reviews, the IRS understandably has difficulty in achieving consistent, even-handed treatment of taxpayers from office to office, even though the IRS is staffed by agents, revenue officers, appeals officers and attorneys who devote themselves full-time to the tax laws.

If deterrence and the encouragement of voluntary compliance are the main goals of the prosecution of general program criminal tax cases, the need for uniform, even-handed treatment from district to district is too important to allow individual judgments to be made on the basis of the level of tax interest, tax expertise, and available staffing of each individual United States Attorney. These cases should be prosecuted using nationally enforced standards.

Independence of Tax Division

The IRS District Counsel staff performs a technical legal review of proposed prosecutions; however, the IRS legal staff, skilled as it is, does not review cases from the same perspective as the Criminal Section of the Tax Division. The litigation specialty of the district counsel's legal staff primarily involves non-jury civil trials in the Tax Court. This does not create the same background for review purposes that the Criminal Section of the Tax Division possesses.

When the reviewing IRS attorney advises the special agent that the prosecution standards of the Tax Division have not been met, this is a position which an IRS agent is likely to accept; much less

enthusiasm greets any prosecution declination based solely on an IRS attorney's own perception of where the file is weak. The District Counsel staff is also highly influenced in its reviews by the positions of the Tax Division.

Moreover, the local legal staff of the IRS, although technically reporting to the Chief Counsel (who ultimately reports to the General Counsel of the Treasury), relies heavily on the local Regional Commissioner and District Directors for administrative support and day-to-day assistance. The IRS attorney staff simply does not have the same degree of independence as the Criminal Section, which is beholden to no one in the field, neither the U.S. Attorneys nor the IRS, for its own organizational support.

Complexity of the Tax Laws

The tax laws are complicated and every tax reform act makes them more so. Since 1980, successive tax reforms have not been matched by explanatory Treasury Department regulations.

Given the absence of regulatory guidance from the IRS, this is a most inopportune time to eliminate the review of general program cases by the Criminal Section.

Considering the confusion caused by successive tax changes and reforms, we cannot point to a time when review on a national basis of proposed tax prosecutions is more necessary than right now.

Lack of Countervailing Benefit

The federal tax system will not benefit by eliminating Tax Division review of proposed criminal tax cases. Final disposition of these cases will not be achieved any faster; indeed, we understand there is a very small inventory of cases awaiting review in the Criminal Section. We are unaware of any backlog either in the IRS District Counsel offices in the field or at the Criminal Section in the Tax Division.

Comparison to Civil Tax Cases

Civil tax refund cases in the U.S. District Courts are currently initially reviewed by the IRS District Counsel's Office. In many instances, the cases are reviewed in the Chief Counsel's office in Washington. In any event, the cases are ultimately forwarded to the Tax Division for further review and defense.

The review of these strictly civil cases parallels the review of criminal cases, except that the Tax Division usually has trial responsibility for refund cases. There is no justification for giving a lesser degree of review to criminal tax cases, involving the liberty of our citizens, than to civil tax cases, which involve only money.

In summary, the present procedure for the review of criminal tax cases has evolved into a system which works very well. Tax prosecutions are unique in our system because of the important role they play in the voluntary compliance with the tax laws by the American people. All Americans are affected by tax prosecutions and note their success and failure. There is no reason to tamper with the current review process of criminal tax cases.

The careful, independent review, under nation-wide standards, of proposed tax prosecutions is critical to assure well-founded cases and even-handed treatment. This generates respect for the law and a high degree of voluntary compliance.

We respectfully submit that these advantages will be eroded if the review by the Tax Division is eliminated. The system should not be changed.

Very truly yours,

LOUIS S. FREEMAN
Chairman
Federal Taxation Committee
Chicago Bar Association

cc: Honorable David Pryor
Honorable Harry Reid

3962t

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March 23, 1987

Hon. Edwin Meese, III
Attorney General
United States Department of Justice
10th and Constitution, N.W.
Washington, D.C. 20530

In re: Review of Criminal Tax Cases

Dear Mr. Meese:

In the last few days, we have learned through our colleagues in the Tax Section of the American Bar Association of plans to severely curtail, if not eliminate, the review of criminal tax cases by the Criminal Section of the Tax Division prior to their referral to the United States Attorneys for prosecution. This is quite disheartening to the Tax Committee of the Chicago Chapter of the Federal Bar Association, as well as to both of us personally.

From an historical standpoint, the desire of United States Attorneys to receive prosecution recommendations straight from IRS Special Agents has simply been a fact of life. One of us, Dennis Fox, who served nearly 29 years as an IRS attorney, including such positions as Associate Chief Counsel (Tax Litigation) and Regional Counsel, Midwest Region, cannot recall a time when the Tax Division did not face objections from United States Attorneys to the legal review process applied to criminal tax cases prior to referral for prosecution. The Tax Division, the Commissioner, and the Chief Counsel for the IRS have firmly resisted the notion that less review is better. You have probably become aware of the 1980-1981 efforts of a committee of United States Attorneys led by Mr. Thomas P. Sullivan, then U.S. Attorney in Chicago, to eliminate pre-referral legal review, either at the IRS District Counsel level or the Tax Division level, preferably both. Even the General Accounting Office questioned the procedures. Nevertheless, Assistant Attorney General Carr Ferguson, Commissioner Roscoe Egger and Chief Counsel Kenneth Gideon stood fast as to the need for careful legal review and no review responsibilities were eliminated.

Hon. Edwin Meese, III
March 23, 1987
Page two

Our objections to any elimination of Tax Division review are these:

1. The United States Attorneys need the expert appraisal of a prosecution file that the Criminal Section gives them. We are dealing with the potential loss of freedom for these proposed defendants, and the financial setback, even ruin, that a trial and acquittal will cost them. It is no answer to opine, as we have heard expressed, that if a prosecution results in an acquittal, no harm has been done because justice has been served. The attorneys and reviewers in the Criminal Section bring together a unique blend of procedural skill and technical expertise; they are in frequent contact with the legal staff of the IRS Chief Counsel with respect to the technical positions being studied by the Service; they keep aware of the civil tax positions being advanced in the Tax Court and by the rulings functions of the IRS; they assure that the prosecution recommendation made to the United States Attorney (or the declination, if that is the end result) takes into account the evidentiary requirements for a successful prosecution as well as the technical requirements for a nation-wide position to achieve consistency in the enforcement of the criminal tax laws throughout the nation.

2. Our federal tax system affects to some degree practically every person in the United States. Even with its heavy reliance on standard manuals, operating instructions, technical advice, and internal reviews, the Service itself has difficulty in achieving consistent, even-handed treatment of taxpayers from office to office. And this difficulty exists even though the IRS is staffed by agents, revenue officers, appeals officers and attorneys who devote themselves full-time to the tax laws. It seems clear to us that if deterrence and the encouragement of voluntary compliance are the main goals of the prosecution of general program criminal tax cases, the need for uniform, even-handed treatment from district to district is too important to allow individual judgments to be made depending on the level of tax interest, tax expertise, and available staffing at the level of each individual United States Attorney. It seems inevitable that areas of overly flexible prosecution policies will be matched with areas of overly aggressive prosecutions of proposed defendants throughout the country, given the result of withdrawing the steadying influence of the Criminal Section from the prior review of those recommended prosecutions. The Federal tax system is too important to remove the one function which can directly control the flow of these cases for prosecution, using nationally enforceable standards.

3. It is difficult for us to articulate any perceived advantages to the tax system from removal of the Tax Division from criminal tax review work, other than relatively modest staff savings which may be achieved at the national level. The cases will not finally be disposed of any faster; indeed, we understand there is a very small inventory of cases awaiting review in the Criminal Section compared to possibly ten times that amount in the hands of the United States Attorneys. There is no pipeline backlog either in the IRS District Counsel offices in the field nor at the Criminal Section level in the Tax Division. You probably have been advised that in 1980 and 1981 it was perceived that the attorney staff of the IRS was creating a buildup of inventory at their level before forwarding the cases to the Tax Division in Washington; this was resolved, practically overnight, by the Chief Counsel's adoption of performance standards requiring the processing of criminal cases, either by rejection or approval, in 90 days; the solution was not to eliminate legal review but to assure that the attorney staff understood the need to give priority to those cases. Even if it is now perceived that there is unjustified delay at the Tax Division level (which we have not heard, and do not for an instant believe) the answer is to adopt the same formal goals and priorities as did the IRS Chief Counsel, not to eliminate the review.

4. One could contend that technical legal review can be obtained from the IRS District Counsel staff in the field, and this is true. We contend, however, that such legal review does not rise to the same influential level nor is it as effective as the standards set by the Criminal Section of the Tax Division. The degree of attention paid to the Tax Division by the IRS' own legal staff has always been very high. Our experience during our own Government service has been that every national meeting of IRS supervisory attorneys includes a review of the Tax Division's prosecution standards, to some degree. We believe it is standard operating procedure in many IRS regions for the regional counsel to periodically distribute to his own field attorneys a compendium of the critiques of prosecution recommendations as made by the Criminal Section. We contend, because it is true, that the influence of the Tax Division is at least as strong, maybe stronger, on the IRS itself as it is on the United States Attorney offices throughout the country.

5. The IRS legal staff, skilled as it is, does not review cases from the same perspective as the Criminal Section of the Tax Division. The litigation specialty of the district counsel's legal staff involves non-jury civil trials in the Tax Court (and in a number of cities the bankruptcy courts) which does not create the same background for review purposes that the Criminal Section of the Tax Division possesses. When a reviewing IRS attorney advises the special agent that the prosecution standards of the Tax Division have not been met, this is a position which an IRS agent is likely to accept; much less enthusiasm greets any proposed declination based solely on an IRS attorney's own perception of where the file is weak. Moreover, the local legal staff of the IRS, although technically reporting to the Chief Counsel (who ultimately reports to the General Counsel of the Treasury), relies heavily on the local Regional Commissioner and District Directors for administrative support. From preparation of vacancy announcements and requisitioning of equipment to emergency funding when the Regional Counsel's budget runs short, the legal staff depends on the Regional Commissioner and District Directors for much day-to-day assistance. Human nature being what it is, the independence of house counsel (which is what the IRS attorney staff is) does not equal the same appraisal of a criminal case given by the criminal section, who are beholden to no one in the field, neither the U.S. Attorneys nor the IRS, for their own organizational support.

6. The tax laws are complicated and every tax reform act makes them more so. Tax accountants and the tax bar have made do since 1980 with tax reforms whose complexities have not been matched by explanatory Treasury Department regulations. We submit this is a most inopportune time to eliminate the review of general program cases by the Criminal Section; these are, after all, the cases affecting proposed defendants who are not racketeers, not part of organized crime, not part of the drug enforcement program but ordinary citizens who might just as well be innocently, as well as culpably, caught up in the confusion caused by successive tax changes and reforms. We cannot point to a time when review on a national basis of proposed tax prosecutions is more appropriate than right now.

For the foregoing reasons, we request that no substantial changes be made in the authority of the Criminal Section of the Tax Division to review prosecution recommendations in the general

program prior to referral to the United States Attorneys.

Very truly yours,

Federal Bar Association
Tax Committee, Chicago Chapter

Michael Von Mandel

Dennis J. Fox

Co-Chairmen

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April 17, 1987

Mr. William Wilkins
Chief Counsel
Senate Finance Committee
Room SD-205
Dirksen Senate Office Building
Washington, D.C. 20510

In re: Taxpayers' Bill of Rights

Dear Mr. Wilkins:

A notice recently appeared in a tax publication inviting written views from the public by May 8 concerning S 579, introduced by Senator Harry Reid, to establish a "Taxpayers' Bill of Rights".

The Tax Committee of the Chicago Chapter of the Federal Bar Association does have one strong recommendation which ought to be embodied in any "Bill of Rights" for the taxpaying public, for reasons which this letter will explain. The statement which we propose for embodiment in any legislation, in simple terms, is as follows:

"The public is entitled to uniform application and enforcement of the federal tax laws by any agency charged with administering them, whether the Internal Revenue Service or the Department of Justice, and regardless of the location at which the taxpayer's case is being handled."

Our conviction that this is an essential element of any program for administration of the federal tax laws has been bought into focus in the last few weeks by a proposal which we understand has been informally put forth by Attorney General Edwin Meese III, and on which the views of the Commissioner of Internal Revenue have been sought. The Attorney General's proposal would greatly diminish, if not eliminate entirely, the review of criminal tax prosecutions recommended by the numerous field offices of the Internal Revenue Service prior to referral to the affected United States Attorney for the actual filing of an information or securing of a grand jury indictment.

On March 23, 1987 the Tax Committee of the Chicago Chapter, FBA, wrote to Attorney General Meese on this very topic, expressing our opposition. Through our colleagues in the Tax Section of the American Bar Association we also learned that on July 1, 1986, a formal report by the Section of Taxation of the ABA, opposing any such proposals, had been delivered to the Hon. Roger Olsen, Assistant Attorney General, Tax Division.

Our contacts during the past two weeks with Mr. Gerald A. Feffer, Chairman of the Tax Section's Committee on Civil and Criminal Penalties, has verified that the Attorney General's proposal has not been withdrawn; it remains under very active consideration; and the Tax Section of the ABA continues to oppose it.

Mr. Feffer is a partner in the law firm of Williams and Connolly, Hill Building, 839 17th Street, N.W., Washington, D.C. 20006; telephone, 331-5000.

We understand that the Tax Committee of the Chicago Bar Association, at this very time, is preparing a statement for the Attorney General opposing his plans to decentralize the review of recommended criminal tax prosecutions to the various United States Attorney offices.

It seems to us that the most fundamental requirement of a fair federal tax system lies in even-handed treatment of the public, whether in assessment of tax, collection of tax after assessment or prosecution of alleged offenders for tax violations. And yet, even though a most basic liberty is at stake, being freedom from arbitrary prosecution, the Attorney General proposes to delegate to each individual United States Attorney the authority to make the difficult technical decisions necessary to determine whether a taxpayer should be officially charged with a tax crime, and prosecuted.

It may be that the taxpaying public has ceased any expectation that the tax laws will become simple, understandable, or fair. But we believe the public continues to expect and is entitled to impartial, nationally enforced, even-handed standards under which those laws are administered. The current plans of the Attorney General to delegate decisions in an area of such overwhelming complexity as tax prosecutions seems to us to have come at the very worst time in our nation's history. Certainly, as our letter to the Attorney General and the American Bar Association's report shows, the changes will produce no benefit of any consequence to the Justice Department. On the contrary, inconsistent treatment of the public from one federal judicial district to another is assured.

Mr. Williams Wilkins
April 17, 1987
Page three

Both our letter to the Attorney General and the ABA report point out that there appears to be an uncanny repetition of similar proposals over the past fifty years, within the Department of Justice. Even if the current proposal of Attorney General Meese is withdrawn, it seems certain, based on history, that this same proposal will be raised again, a few years hence.

We therefore urge that you call our letter and attachments to the attention of Senator David Pryor, Subcommittee Chairman. We would not only like to see our recommended principle formally established in legislation but specifically would like language included in its legislative history that one of the purposes is to assure continued pre-review of criminal tax prosecutions by the Tax Division of the Department of Justice.

Very truly yours,

Federal Bar Association
Tax Committee, Chicago Chapter

Dennis J. Fox

Dennis J. Fox

Michael Von Mandel

Michael Von Mandel

Co-Chairmen

encl: March 23 letter to
Attorney General
ABA Tax Section Report

In the Matter of: KilClean, Inc, Michael & Teena Buckley
5115 Norcrest Dr., Columbus, OH 43232
(614) 864-8445
Unreasonable IRS collection practices

Company History: KilClean, Inc., was formed on October 1, 1983 and was a closely held family operated Ohio corporation primarily engaged in the janitorial, apartment cleaning and painting business. Michael D. Buckley and Teena M. Buckley were the primary owners and operational officers of the business at cessation on February 24, 1986. Bankruptcy was filed on 2/24/86 to halt IRS levy, but it failed.

Employment: At cessation, KilClean, Inc., had a total employment force of 44 individuals; 28 individuals were full-time employees and 16 were part-time. Total payroll for the period January 1, 1986 to February 24, 1986 was $52,300. Further, as the business activity of KilClean is seasonal in nature, the IRS levy in 2/84 was done at the financial low peak of this business. All workers were put out of work by IRS.

History of tax problem: On July 19, 1985, our legal counsel contacted the IRS by letter dated July 19, 1985 advising that there was substantial confusion on the tax liability accrued to the corporation and that of a former proprietorship operated under a similar name. Prior to this time, the company had not received the first communication from IRS regarding past due withholding taxes. Our counsel was not contacted at all; the response of the IRS was to assign a revenue officer who contacted us directly. Subsequently, after a number of meetings with the R.O. we entered into an installment agreement to repay the past due taxes. Payment of $5,750. was made to the IRS from 12/1/85 through 1/30/86 and complete financial and accounting records were provided to the R.O. Our CPA and legal counsel met with the R.O. in early February 1986 and were advised that since the financial statements showed a decrease in receipts and profit that the entire tax would have to be paid in full. Our plea that winter months were slow received no consideration. Seizure of all company bank accounts and accounts receivable occurred on February 14, 1987 and thereafter without notice to us. This collection occurred despite our cooperation in providing detailed financials, customer lists, and detailed accounts receivable which enabled IRS to close us down without which data they could not have acted.

Tax Liens: A total of 2 tax liens were filed against the company. The first lien was filed on December 9, 1985 in the amount of $80,599.15 for withholding taxes--5 quarters. [O.R. 6669, page J-18]. A second IRS lien was filed on December 16, 1985 in the amount of $918.72 [O.R. 6708, page H-03] for FUTA tax liability. The date of assessment by the IRS was September 16, 1985. The above amounts include all statutory additions and interest. However, the actual withholding tax due was about $38,500 the additional amount due being penalties and interest.

Payment: After seizure, IRS collected about $31,000 all of which was applied to penalties, interest and FUTA portions of the tax and we were out of business.

April 16, 1987

William J. Wilkins
Staff Director Chief Counsel
U. S. Committee on Finance
Room S.D. 205
Washington, D. C. 20510

Dear Mr. Wilkins:

I recently read an article in the Los Angeles Times in regard to the Internal Revenuq Service on seizures of property and wages.

On March 12, 1987, I received a levy on my wages of 50% of the amount of $91,000 owed on my former husband's delinquent taxes.

I had absolutely no warning that this was coming and I was not even married to him during the years which cover the taxes due.

In addition to putting a levy on my wages, the IRS seized my home. I had borrowed the money to purchase this home from my employee pension plan and then personally from my own earnings, made the payments on the home.

When we were divorced in 1986, I was legally given the house in the divorce settlement, as my husband had not contributed to the payments on this home.

When I called the local IRS office in Las Vegas and explained these circumstances to them, they refused to communicate with me, thus forcing me to enlist a private tax advisor at additional expense to me.

After this person contacted numerous personnel at the IRS office, he finally was able to obtain a release on my salary. However, the IRS refused to release the levy on seizure of my home. Their reason was that after obtaining the divorce, I failed to get a quit claim deed from my husband to me and, therefore, his name was still on the original deed.

The IRS refused to accept any documentation from the court as evidence that the house was mine or any loan information where I borrowed money to pay it, nor the cancelled checks proving I had made all the payments.

The private tax advisor finally was able to get the IRS to send the information to legal counsel where the case is still pending.

All of these seizures were done without any prior notification to me. I was not given the opportunity to present the enclosed documentation.

Needless to say, this creates mental strain and anxiety as well as monetary expenses when one has worked all one's life to buy a house and to find that it is seized by the IRS without their doing any prior investigation to ascertain if this could legally be done.

Enclosed are the following exhibits for your information:

1. My marriage license.
2. The divorce decree.
3. The loan information to buy the house.
4. Cancelled checks for payments on the house.
5. The lien on my wages.
6. The lien on the house located at 6211 Elmira, Las Vegas, NV with a legal description of: Lot four (4) in Block (13) of Foothill Village Unit No. 4 as shown by map thereof on file in Block 30 of Plats, Page 17, in the office of the County Recorder of Clark County, Nevada.

Thank you for taking the time to review my case and should you need any further information, I may be reached during the day at the King 8 Hotel where I am the Hotel Manager.

For your convenience the number is 1-800-634-3488.

Thank you again.

Sincerely,

Joan Kilburn

6211 Elmira
Las Vegas, NV 89103

JK:mab
Enclosures (6)

Suite 700
600 Maryland Ave. S.W.
Washington, D.C. 20024
(202) 554-9000

National Federation of
Independent Business

NFIB

STATEMENT

OF THE

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Submitted to: Senate Finance Committee,
Subcommittee on IRS Oversight

Subject: The Taxpayers' Bill of Rights, S.604

Date: April 28, 1987

On behalf of the more than one half million small business owners who are members of the National Federation of Independent Business (NFIB), we submit the following comments for the hearing record on S. 604, The Taxpayers' Bill of Rights.

No one who understands small business doubts that of all federal agencies, the most feared is the Internal Revenue Service (IRS). This fear is not groundless, it is based on experience.

What other federal agency can reach into its warehouse of enforcement tools and threaten an individual with the type of armaments which the IRS has? Can any other agency force you to pay a fine before a hearing on the issue? The IRS can. Can any other agency put you out of business, only to say later, we're sorry, but we made an error and face no retribution? The IRS can. For that matter, which other agency can snub its nose at Congress and consider its mission to raise revenues of more importance than the law Congress passed requiring that regulations be analyzed to determine disproportionate economic impact on small business? None but the IRS.

For these reasons and others which will be detailed, NFIB congratulates Senators Pryor, Grassley, and Reid for introducing this legislation, S. 604, the Taxpayer's Bill of Rights. We look forward to working with the members of the Committee on this legislation as it works its way through the legislative process.

The following are our thoughts and recommendations on key sections of S. 604:

Section 2 -- Disclosure of Rights and Obligations of Taxpayers

A taxpayer who must contend with an IRS audit, or simply a penalty notice, should be provided the courtesy of having his/her legal options explained in plain English.

When a taxpayer is not represented by a lawyer or other tax professional, it is especially critical that the IRS take the time to disclose the rights of the taxpayer as well as his obligations under the law. The IRS employee should notify the taxpayer of his right to disagree with the agent and to seek a review of his case in the conference or appellate division.

In addition to disclosing a taxpayer's rights, when a taxpayer is presented with a request for any payment, a full disclosure of the basis for any tax deficiencies, interest, or penalties should be included. Most penalty notices only include the total amounts broken down by category, with a series of explanation codes which are barely useful. This results in a further delay in payment because the taxpayer will typically ask the IRS how the assessment was calculated.

Section 4 -- Procedure Involving Taxpayer Interviews

We disagree with Section Four, which would require a Miranda-type warning prior to any interview of a taxpayer by an IRS employee. The majority of IRS cases are civil actions to determine tax liability. It would serve no purpose to turn every IRS contact into a potential criminal hearing. Treating all IRS inquiries as criminal inquiries places an entirely different legal burden on both taxpayers and the IRS.

In those cases, however, when an agent is examining a taxpayer for possible criminal fraud charges, the taxpayer should be made aware of the agent's purpose and intent so that he may avail himself of whatever protections the laws afford.

Section 8 -- Levy and Distraint

The circumstances under which the IRS may impose a levy need revision desperately. Too often, computers automatically file levies without adequate notice to the taxpayer, and too often a levy is filed by the computer while response to a previous notice is in process. The decision on when to propose a levy should not be made by a computer; it is improper and abusive of a taxpayer's basic rights.

Basically, the levy rules should be imposed only after an IRS representative has reviewed all available facts and circumstances -- and only after he/she has made personal contact with the taxpayer. If, after these steps, it is determined that no other recourse is available, the levy procedures should be considered.

Revenue officers charged with collection of IRS debt should be required to make the same contacts and disclosures as previously described, allowing adequate response time before proceeding with more severe actions.

Most importantly, IRS management should consider the advisability of having one individual be responsible for shepherding a case through its basic stages. How often have we heard the complaint that each time a taxpayer calls the IRS, they have to go back to the beginning because they are always dealing with new people? Even if disagreements take place, it is better for the IRS to have one employee to rely on for the facts of the case.

Section 10 -- Installment Payment of Tax Liability

Many taxpayers have availed themselves of the ability to pay past due taxes through some type of installment plan. In most cases the IRS is amenable to this arrangement, if it is strictly adhered to. However, the allowance for this is discretionary and varies from district to district, some districts not allowing it under any circumstances.

The circumstances under which installment payments are allowable should be standardized to ensure fair treatment of all taxpayers. At the same time the procedures must require the IRS to live up to the agreement. We have heard of instances in which the IRS abrogated an installment agreement for no apparent reason, asking the taxpayer for full immediate payment of any outstanding balances.

It is not the IRS's business to act as a financing company. But having begun the practice of allowing installment payments of tax liabilities, the IRS must clarify the conditions under which such a privilege will be granted or taken away, and be required to live up to its agreements.

Section 11 -- Advice of the Internal Revenue Service

Tax practitioners have always found curious the distinctive treatment IRS gives to practioners who make mistakes vis-a-vis their IRS counterparts. A tax practioner who fails to properly disclose all pertinent information on a return, or who is found to have understated a taxpayer's tax liability, is subject to fines and a substantial amount of harrassment. However, IRS employees have no such constraints and, in fact, have the freedom to give totally erroneous information to taxpayers. The answer may be for the IRS to stop giving taxpayers information unless it is approved by an independent technical reviewer.

Section 13 -- Administrative Appeal of Liens

The liens procedures need to be reviewed in accordance with the comments made on levying procedures. In addition no lien should be filed without adequate review of the case and current taxpayer contact.

Section 16 -- Burden of Proof in Administrative and Judicial Proceedings

Under common law, a man is innocent until proved guilty. It seems incomprehensible that with the IRS, a man is guilty until proved innocent. However, in what other way can we interpret the actions of the IRS rules which requires a taxpayer to prove he has included an amount in income or properly paid a tax? This must be changed.

It makes sense that the IRS bear the burden of proof in disputes with taxpayers. It is far easier for the IRS, with all the facts of the case at hand, to explain why they took a particular course of action against a taxpayer than for that taxpayer to try and collect all the facts and present the case.

NFIB has a longstanding position on this issue and has testified a number of times on the importance of having the IRS carry the burden of proof in administrative and judicial proceedings. Section 16 therefore is a key section of the bill to NFIB.

Section 17 -- Application of the Regulatory Flexibility Act to the Internal Revenue Service.

During the debate on tax reform, the Senate passed an amendment to require the IRS to comply with the provisions of the Regulatory Flexibility Act of 1980. This provision was quickly lost in conference as a result of pressures from the IRS and Treasury officials.

The purpose of Reg. Flex. is to require an agency when proposing a regulation, to determine whether the regulation would have a disproportionate economic impact on small business. If there is a disproportionate impact, then the agency is authorized to consider alternate requirements for small business.

Examples are rife of the need for compliance with this law. The best examples are the debt equity regulations of 1980 and the auto log regulations of 1984. In these and many other cases, small business was forced to spend funds on compliance costs which exceeded the amount of taxes required.

IRS has claimed an exemption from Reg. Flex., which is a clear circumvention of Congressional intent. Maintaining that all of its regulations are interpretive, IRS totally ignores the purpose of Reg. Flex. by claiming the interpretive exemption in the Administrative Procedures Act, to which Reg. Flex. was appended.

NFIB strongly supports Section 17 of the bill. We are only concerned that it will be too late to have any beneficial impact on the IRS's new regulations issued as a result of tax reform.

Conclusion

The IRS and our voluntary compliance system were, and still are, the envy of the western world for the efficiency in which taxes are administered and collected. This agency needs to keep sight of one important fact, that is, this country was founded on the basis of equitable taxation. The agency responsible for collecting taxes has begun to take its position for granted, and as a result, the voluntary compliance rate is dropping. The IRS must be responsible to the society it serves, not the other way around.

We look forward to working with the Committee for the enactment of this bill.

0278T

REPORT ON THE PROPOSED OMNIBUS TAXPAYERS' BILL OF RIGHTS ACT

Committee on Taxation
The Association of the Bar of the City of New York
May 6, 1987

The proposed Omnibus Taxpayers' Bill of Rights Act (the "Bill") is intended to protect the rights of taxpayers in their dealings with the Internal Revenue Service. In general, the Bill requires comprehensive disclosure to taxpayers of their rights in dealing with the Service and would restrict certain powers of the Service in conducting examinations.

The Committee on Taxation agrees that taxpayers should be informed of their rights and obligations in dealing with the Internal Revenue Service, but it believes that many of the Bill's provisions are unnecessary and would seriously undermine the administrative process. The system governing the examination of taxpayers by the Internal Revenue Service must balance the need to protect taxpayer rights against the need for the government to execute the tax laws efficiently. If the Service is unable to enforce compliance with respect to the few taxpayers who do not meet their obligations, the losers will be not the government but the overwhelming majority of taxpayers who conscientiously comply with the laws. Although we sympathize with the desire of the Bill's proponents to protect taxpayer rights, we believe that some provisions of the Bill tilt the scales too far against the government's ability to enforce the laws.

The Committee believes that the Service generally carries out its responsibilities to enforce the tax laws fairly and efficiently. Although individual representatives of the Service may occasionally abuse their discretion, we suspect that these cases are few and far between. The occurrence of a few cases of abuses of taxpayers by Service employees should not lead Congress to enact a system that seriously undermines the administration of the tax laws.

We recognize that our perspective may not be typical. The Committee's members are experienced tax lawyers and their contacts with the Service obviously occur in cases in which the taxpayer has retained sophisticated advisers. The greatest need for taxpayer guidance and protection is in cases in which the Committee members are not involved: e.g., cases in which an individual taxpayer who is not in a high income tax bracket is notified that the Internal Revenue Service wants to make sure that the deductions that he or she claimed for alimony and charitable contributions are proper and that he or she correctly reported bank interest. We will focus on this type of situation for the most part in our analysis of those provisions of the Bill with respect to which we have comments.

Section 2. Disclosure of Rights and Obligations of Taxpayers

The Secretary of the Treasury would be required to prepare a "brief but comprehensive statement" setting forth "in simple and nontechnical terms" the rights and obligations of a

taxpayer and the Service during an audit, the procedures by which a taxpayer can appeal an adverse decision of the Service (administratively and in court), the procedures for prosecuting refund claims and filing of taxpayer complaints, and the procedures by which the Service can enforce the internal revenue laws (including assessment, jeopardy assessment, levy and distraint, and enforcement of liens). The statement must be distributed to "all taxpayers along with any tax form or forms sent from the Internal Revenue Service to the taxpayers."

There is an obvious tension between the requirements that this statement be both "brief" and "comprehensive." If all of the material set forth in this provision is covered, it is likely that brevity will yield to comprehensiveness. Some of the subjects do not lend themselves to brief discussion. The statement would presumably have to cover the taxpayers' constitutional rights not to incriminate himself and to be protected against unreasonable searches and seizures. Given the confused state of the case law on these subjects, it is hard to imagine how a description of a taxpayer's constitutional rights could possibly be brief if it was to be of any use.

We also question whether it would be desirable for this statement to be sent to all taxpayers whenever they received forms from the Internal Revenue Service. This would be expensive and not particularly useful to taxpayers in many

74-603 O - 87 - 11

cases. Does it really make sense, for example, to distribute such a form to every householder employing domestic help when the quarterly forms for the reporting of Social Security taxes are distributed?

We agree that it would be desirable to provide taxpayers who are facing an Internal Revenue Service audit with a brief statement of audit procedures. This could be sent to taxpayers along with the notice that their returns have been selected for audit; there is no reason for it to be sent out whenever any kind of form is distributed. The statement could describe the manner in which deductions are expected to be substantiated, could assure taxpayers of their rights to be represented by professional advisers, could tell them how to report instances of revenue agent misconduct, and could contain similar items. Rather than getting into a detailed discussion of constitutional rights, the statement might refer the reader to more detailed booklets describing these issues and tell the reader how they might be obtained.

Section 4. Procedures Involving Taxpayer Interviews

Proposed Section 7519(a) of the Code would require the Service to conduct an interview "at a reasonable time and place convenient to the taxpayer." We are not aware that the Service has been unreasonable in designating times and places to conduct audits, and we question whether this provision is necessary. We are concerned that it could enable tax

protesters to disrupt the audit process by refusing to agree to the reasonableness of a time and place chosen by the Service. It should be sufficient to inform taxpayers in the communication sent with a notice of audit that the Service is required to schedule meetings at a reasonable time and place and that any complaints about the failure of an agent to do this can be directed to his supervisor. This could be included in the committee reports accompanying the disclosure provision and should not be included in the statutory language itself.

It might nevertheless be appropriate to provide that a taxpayer should be allowed to insist that meetings be held at the office of a professional advisor, if reasonably convenient, rather than at the taxpayer's home or office. We are aware of some instances in which revenue agents have insisted on meetings in the taxpayer's home or office; this raises invasion of privacy questions and should not be permitted if the taxpayer is willing to produce all necessary records at a professional advisor's office.

The same provision allows both the taxpayer and the Service to record an interview. We believe that recording of interviews would seriously inhibit discussions at audits and would in many cases prevent the give-and-take that enables audits involving several issues to be resolved. Although we can appreciate the desire of taxpayers who believe that they are being abused by the Service to obtain direct evidence of

that abuse, we feel that the adverse affects of recording of interviews on the conduct of routine audits would be so substantial as to outweigh any advantages.

Proposed Section 7519(b) would require the Internal Revenue Service to give Miranda warnings before any routine civil audit. Existing government procedures require Miranda warnings at an appropriate stage in a criminal investigation. We see no reason for them to be given during a civil audit. Moreover, the Miranda warnings would necessarily be misleading in a civil audit if, as we recommend below (but contrary to the Bill's provisions), the taxpayer has the burden of proving the accuracy of his return. Unsophisticated taxpayers will be misled and offended if they are told that they have the right to remain silent and then are told that if they do remain silent their deductions will be disallowed. One possibility would be to include the Miranda warnings on the notice of audit along with an explanation of their implications.

Proposed Section 7519(c) would allow a taxpayer to be represented by "any person" with a written power of attorney. The Service's present practice is to permit a power of attorney to be granted only to a person who is subject to professional disciplinary requirements or who is enrolled to practice before the Service and, hence, is subject to discipline by the Service. This limitation is appropriate. We believe that a person representing taxpayers before the Internal Revenue

Service should be subject to professional ethical standards and discipline. We would not object to a rule that allowed a taxpayer who was present at an audit to bring anyone along regardless of their professional capacity.

The Committee believes that it would be appropriate to require the Service to recognize powers of attorney and to deal directly with someone holding a power of attorney where the taxpayer has indicated that this is his desire. On the other hand, we do not believe that the statute should, as this apparently would, require the Service to recognize any written power of attorney regardless of its form. The committee reports with respect to the legislation should indicate that the Service may prescribe forms for powers of attorney.

The interview provisions would apply to interviews conducted on or after the date of enactment. This would be wholly impractical. Agents conducting audits on the day of enactment would have no way of knowing about the new requirements. A reasonable grace period (perhaps 90 days) should be given to the Service to inform its agents of the new rules.

Section 6. Basis for Evaluation of Internal Revenue Service Employees

This provision would prevent the evaluation of Internal Revenue Service personnel from being based on amounts collected from taxpayers in audits or investigations. We

believe that this provision is appropriate. We have no reason to assume that the prohibited practice is now being followed by the Service, but we see no objection to including the provision in the statute. The committee reports should indicate that this is not intended to preclude consideration of factors such as the number of audits completed and skill demonstrated in understanding the tax laws and in raising significant issues.

Section 7. Authorizing, Requiring, or Conducting Certain Investigations

Proposed Section 7214(c) of the Code would prevent the Service from examining the "beliefs or associations" of any individual or organization or maintaining any records containing information on these subjects. Individual employees of the Service would be subject to imprisonment for up to two years and/or fines of up to $10,000 for violations of this provision and would be subject to civil suit by the aggrieved party.

This provision undoubtedly proceeds from good motives, but we are not convinced that it is needed and can see areas in which it would be impractical. An organization's "beliefs" might be relevant in connection with its claim to tax exemption under Section 501(a) of the Code. A person's "associations" might be relevant in determining whether he is engaged in a business or is a partner in a partnership.

We do not believe that the Service has the power under present law to investigate the "beliefs" or "associations" of any taxpayer other than in ways relevant to a legitimate determination of tax liability and compliance with the tax laws, and any Service abuses could be dealt with under present law. If Congress wished to clarify this point, it could enact legislation prohibiting inquiries into a person's beliefs and associations that were not relevant to a determination of his or her tax liability.

Section 8. Levy and Distraint

This provision limits the ability of the Service to levy on a taxpayer's property and expands the exemptions. We support the proposed increase of salary or wages exempt from levy from $75 per week to $150 per week plus $50 per week for each dependent. The old level was inadequate in view of the current cost of living.

Section 10. Installment Payment of Tax Liability

Proposed Section 6159(b) of the Code would apparently require the Service to offer to enter into an installment payment arrangement with any individual whose liability for tax does not exceed $20,000 and who has not been delinquent in payments under any other installment payment agreements during the three preceding years. On the other hand, Sections 6159(c)(2) and (3) would permit the Service to abrogate an agreement if information which the taxpayer had provided was

inaccurate or incomplete or if the Service determined that the taxpayer's financial condition had changed. These rules seem inconsistent. Section 6159(b) seems to require the Service to enter into an installment payment agreement without regard to the taxpayer's ability to pay the tax currently, yet Subsection (c) allows the Service to cancel the agreement based on the taxpayer's financial status. If the requirement of Subsection (b) is subject to the "authorization" to the Service under Section 6159(a) to enter into installment agreements if the Service "determines that such agreement will facilitate collection," the statute should make this clear.

If the provision is intended to authorize the Service to sign installment payment agreements, it would seem to be unnecessary. The Service already has this right. If the purpose is to require the Service to enter into installment payment agreements for any taxpayer whose liability for the payment of tax does not exceed $20,000, we question whether it is appropriate. A person might have a tax liability of $15,000 and might have more than enough cash to cover it. We see no reason why an installment payment agreement should be required under these circumstances. Moreover, the "liability" to which the statute is addressed is unclear. Does it relate to the taxpayer's entire tax liability for the taxable year or does it relate only to the amount to be collected pursuant to the audit?

It might be appropriate for the statute to require that the Service consider the liquidity of a taxpayer's assets in determining the appropriateness of an installment payment agreement.

The Service would be allowed to abrogate an installment payment agreement for reasons relating to the taxpayer's financial condition only after holding a hearing on the record. This does not seem inappropriate. If the Service has entered into an agreement with a taxpayer, it seems reasonable to afford the taxpayer an opportunity to contest a proposed amendment of that agreement by appropriate proceedings.

Section 11. Advice of Internal Revenue Service

Proposed Section 6404(f) of the Code would provide that the full amount of any deficiency "attributable to erroneous advice furnished to the taxpayer in writing" by an Internal Revenue Service employee in response to a specific request of the taxpayer would be abated along with any resulting penalties and interest. Service employees would be required when giving oral advice to any person to advise that person that the Service is not bound by such advice.

The Committee opposes any rule that a taxpayer be relieved from paying tax if he is incorrectly advised about his tax liability by the Internal Revenue Service. The application of the tax laws respecting income, deductions, and credits is a

result of Congressional policy and a taxpayer should not be relieved from meeting his tax responsibilities merely because an unauthorized low (or high)-ranking Internal Revenue Service employee gives an incorrect written opinion. Certainly, reliance on a written statement by an apparently authorized Internal Revenue Service official should be taken into account in determining the appropriateness of penalties, and, in some cases, might absolutely preclude penalties, but it should not affect the taxpayer's liability for the tax itself or for interest.

As drafted, the statute could apply to a revenue agent's report summarizing the results of an audit. It would certainly not be appropriate for an agent's supervisor to be prevented from correcting a mistaken conclusion of the agent that a certain item was deductible. Any provisions relieving a taxpayer from the consequences of relying on a Service employee's statement should be limited to advice received before the taxpayer's return is filed.

Section 16. Burden of Proof in Administrative and Judicial Proceedings

This provision would place the burden of proof on all issues on the Internal Revenue Service in all administrative and judicial proceedings, except that a taxpayer in sole possession of evidence that would not otherwise be available to the Service could be required to present "the minimum amount of information necessary to support his position."

We strongly oppose this provision.

Placing the burden of proof on the Internal Revenue Service in an administrative proceeding could bring the audit process to a halt in many cases. If, for example, a taxpayer claimed that he had made contributions to 50 charities but offered no documentation, under this provision the Service would be required to subpoena the records of each charity to prove that the taxpayer had not contributed to it. Since evidence of the taxpayer's contributions would be in the files of the charities, the taxpayer would not be the "sole possessor" of that evidence and would be under no obligation to present any evidence supporting his position. Similarly, a taxpayer claiming deductions for home mortgage interest payments would not be the sole possessor of evidence relating to these payments because the payments would be recorded in the files of the bank. Literally, this provision would not even require the taxpayer to disclose the identity of the bank to the Internal Revenue Service, thus placing the burden on the Service to subpoena the records of every possible lender. It does not seem to us to be too much of an imposition on taxpayers to ask them to prove that they are entitled to the deductions that they have claimed on their tax returns.

We also oppose the placing of the burden of proof on the Service in case of judicial proceedings. The determinations of administrative agencies are generally

presumed to be correct when challenged in court. We see no reason for determinations of the Internal Revenue Service not to be entitled to the same deference as are determinations of other agencies. In general, we believe that the Service administers the tax laws fairly and competently and its internal procedures provide extensive appeal rights for taxpayers who are dissatisfied with the finding of a particular Service employee. We see no reason why the burden of persuasion in a judicial proceeding challenging a Service determination should not be placed on the taxpayer.

Committee on Taxation
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MARI ANN BLATCH
Vice President: Consumer and Government Affairs

May 7, 1987

William J. Wilkins
Staff Director and Chief Counsel
United States Senate
Committee on Finance,
Rm. SD-205, Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Wilkins:

Enclosed are three Reader's Digest articles I would like to submit to you for inclusion in the written record of the hearings on the proposed Taxpayers' Bill of Rights.

Thank you.

Sincerely,

Mari Ann Blatch

MAB/jp

Enclosures

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August 1965

Today, evidence from all over the country discloses that the IRS has bullied, degraded and crushed innocent citizens in the name of collecting taxes

Tyranny in the Internal Revenue Service

By John Barron

Whenever an income-tax cheat gets by, the rest of us have to make up the loss in revenue for which he is responsible. In fairness to the great majority of honest Americans, we must encourage the Internal Revenue Service to use every honorable means to collect what is owed the government. But something is now dangerously amiss. In its pursuit of our dollars, the IRS is resorting to tactics that threaten *all* taxpayers.

"Too many Americans pay more than their share of taxes because they are intimidated by a tax-collecting octopus which has them at a disadvantage and keeps them that way," declares Sen. Warren Magnuson (D., Wash.). No one can know just how many are treated unfairly by IRS. Last year it subjected 3,500,000 returns to special examination, extracting extra payments from 1,900,000 citizens because of alleged errors.* Moreover, literally no one is beyond IRS's reach, whether he has made a mistake or not. Bewildered, afraid, lacking money to hire lawyers, the lone individual often succumbs in silence when the awesome powers of government are brought down upon him. But today evidence from all over the country shows that in the name of collecting taxes IRS has bullied, degraded and crushed countless innocent citizens—while unaccountably favoring others. For example:

• In Kansas City, Mo., two IRS agents intruded upon Mrs. Michael Darrah while she was nursing her six-week-old baby. The young mother pleaded with the men to come back another time. Instead, for four torturous hours they questioned her about an income-tax charge against her father, Kenneth R. Layne. When she sought to call him for advice, one man ordered, "Don't touch that phone." Unsure of her rights, Mrs. Darrah asked permission to call a lawyer. "That will only make it worse for your father," an agent threateningly told her. For the terrified woman, it was tantamount to being held a prisoner in her own home. Ultimately, a jury unanimously concluded that Layne was innocent of any crime. But his daughter, never accused of anything, suffered a nervous breakdown.

• In Oakland, Calif., attorney Lew M. Warden, Jr., patiently answered questions about his tax return until an IRS agent demanded all his records. "Those files contain confidential information about some of my clients," Warden protested. "You have no right to them." So IRS arbitrarily disallowed his legitimate business deductions for three years and claimed he owed $19,501.41 in back taxes. It seized his bank account, ordered tenants of a cottage he owned to pay their rent to the government, confiscated his sailboat. Worse still, the constant IRS harassment took him away from his law practice so much that his income plummeted.

Insisting on a day in court, Warden spent his last savings preparing for his tax trial scheduled April 5, 1965. But on April 1, after hounding him for 33 months, the IRS suddenly dropped all charges. For, as it should have known all along, Warden had done nothing wrong and owed it nothing.

Proof Piled High. All this may sound incredible to those who have not yet been victimized by IRS. I was skeptical too—at first. But the proof has been piled high by court rulings, Congressional investigations, unrefuted sworn testimony, documented complaints to Congress and by the *admissions of IRS officials themselves*. It is so overwhelming that concern now grips a cross section of Congress.

More than half the Senate membership has gone on record as calling for something to be done about the way small taxpayers are abused by IRS. "My files, like those of every other Senator, are filled with moving appeals from taxpayers whose experiences with IRS have turned into nightmares of inquisition," says Sen. Norris Cotton (R., N.H.).

Alarmed by multiplying com-

*In the entire nation only 1324 taxpayers were found guilty of actual fraud last year.

Associate Editor John Barron came to national prominence three years ago as a reporter for the Washington *Star*—first for a series of articles on the tangled financial affairs of President Johnson and other leading politicians, then, with colleague Paul Hope, for an award-winning exposé of the Bobby Baker case. Barron joined the Digest's Washington Bureau in 1965. His investigation of IRS spanned six months, required 5800 miles of travel and more than 200 interviews.

plaints, the Senate Judiciary Subcommittee on Administrative Practice and Procedure two years ago began asking IRS officials and their victims questions under oath. The ensuing Senate hearings produced astounding testimony disclosing that: IRS has defied court orders, criminally picked locks, stolen records and threatened reputable people. It has illegally tapped telephones, seized, opened and read personal letters while spying on the private mail of tens of thousands of citizens. It has illegally bugged phone booths and hidden microphones where taxpayers talk with their lawyers.

Moreover, such lawlessness has been encouraged from high levels of IRS. Its Washington headquarters has bought elaborate spying equipment for use about the country. IRS sent many agents to an official Treasury School near the White House to learn how to commit such illegal acts as wiretapping and lock picking. IRS has maintained on call in Washington a staff of specialists in illegal snooping. "I violate state laws at all times," special agent Thomas Mennitt has testified. "It's part of my duties."

Summing up interviews with 621 individuals and 2756 pages of sworn testimony, Sen. Edward V. Long (D., Mo.), chairman of the Senate subcommittee probing into IRS practices, declares: "IRS has become morally corrupted by the enormous power with which we in Congress have unwisely entrusted it. Too often, it acts like a Gestapo preying upon defenseless citizens." Senate Minority Leader Everett Dirksen, a subcommittee member, reports: "Outraged constituents have inundated my desk with letters blistering the Revenue Service's collection practices. They show it is frequently the small taxpayer who is hurt worst in his attempt to deal with a giant bureaucracy like IRS."

Naked Power. Many IRS employes who have witnessed such practices firsthand are deeply disturbed. As a result, they have secretly provided Congress with evidence, a major reason why IRS abuses are now being exposed. Indeed, IRS's own personnel have openly applauded, through their National Association of Internal Revenue Employes, the Senate investigation, even while top IRS bureaucrats have tried to cover up and withhold data. After privately interviewing dozens of IRS agents, I have concluded that most, as individuals, want to be just and reasonable.

What, then, is the matter? Meeting me furtively in San Francisco, one veteran agent explained: "Sometimes you feel like the cop who's got to hand out so many tickets a month if he expects to get ahead. You're judged by how often you bring in more dough. Under such pressure I have seen people determined to find taxpayer error whether it's there or not."

Clearly, from all the evidence, the root of the problem is the IRS "system." For Congress has given so much raw, naked power to this one agency that it is a law unto itself. Consider some of the things it can do—without the approval of any court, judge or anyone else.

IRS can audit, interrogate or investigate anyone, for as long as it wants. In Kansas City, Mo., policeman Paul R. Campbell halted a speeding car driven by an IRS agent. "We'll just have to check your taxes," the agent was quoted as saying, after other arguments failed to stop the officer from writing a ticket. Sure enough, soon after Campbell filed his next tax return, IRS ordered him to report for an examination which lasted two hours. Unable to find anything wrong, it nevertheless pestered him for another four months with phone calls, letters and more interrogations before admitting he owed nothing.

In a small Tennessee town, an IRS agent riffled through mail on a businessman's desk, pried open an envelope and found a letter linking him with "another woman." The agent showed a copy to the man's wife, trying to anger her so that she would agree to inform against her husband.

IRS can assert that a citizen owes taxes, force him to prove he does not. After contracting to sell his home in suburban Detroit, businessman Roger Logan (not his real name) discovered that IRS had slapped liens of $210.07 and $400.07 on it for alleged non-payment of taxes. Logan's wife presented canceled checks and copies of past returns to prove no taxes were due, but without avail. "The best thing to do," an IRS clerk advised, "is to pay off the liens. Then, if you're telling the truth, you can sue to get your money back." Only after Logan got help from a lawyer friend would IRS even take the trouble to verify that he indeed owed nothing. The agency had tied up his home simply because it had two old claims against someone with a *similar* name.

IRS can merely claim that a citizen owes taxes; then, if he fails to pay instantly, it can immediately confiscate his salary or all the money he has deposited in a bank, or seize everything he owns.

Nobody knows this better than farmer Noel Smith of Taylor, Mo. IRS checked Smith's books for nine years without telling him it suspected any significant irregularity. Then one morning a friend ran up to him with a newspaper report that IRS was taking over his farms. Smith rushed to town, only to learn that IRS had confiscated all his money in the bank, the contents of his safe-deposit box, even an insurance policy belonging to his 70-year-old mother. Five days later, IRS formally demanded that he pay it a staggering $501,000.

With help from friends, Smith hired lawyers and accountants to unravel the fantastic IRS claims. Meanwhile, the agency began selling off his stored grain, using sledgehammers to batter apart his bins. "High-handed," "unlawful," declared the U.S. Court of Appeals

upon hearing what IRS had done.

Nevertheless, IRS kept custody of Smith's property and denied him income from it for four years before deciding that he actually owed $54,573 in taxes. Smith paid this "ransom," as he termed it, so that he could recover his land. Another year Smith overpaid his taxes but had to sue to force IRS to give him back $7820 the government owed him. And to this day IRS is still after him. "I did not think it could happen in the United States," Smith told Senate investigators.

But I have found that it does happen. To make sure that people who complain are not just disgruntled crackpots or conniving tax dodgers, I traveled across the country talking to IRS victims, their families and neighbors. And I found that when IRS misuses its vast powers, the people most likely to suffer are not gangsters or rich tax cheats. They are ordinary people who do not command batteries of lawyers and who have no special influence in Washington. And what IRS does to one citizen, it can do to any other.

Kicking People Around. Look at what happened not long ago in Richland, Mo., a small town in the Ozark foothills. As he told the Senate committee, the local bank president, Gordon W. Warren, was alone in his office when two IRS agents marched in and demanded the records of a depositor. "I'll just notify this customer," Warren said, reaching for the phone. "If you do that," an agent told him, "you'll be liable to a $10,000 fine and a ten-year imprisonment." The threats were as illegal as they were inexcusable. But how could Warren know?

Down the street an IRS agent confronted a waitress with a $275 tax claim. When she protested, the agent threatened to confiscate and "dispose of" her old car unless she paid up *that day*. Near tears, she went to see Warren, who agreed to lend her the $275 necessary to hold IRS off. Only after she spent days getting a sworn affidavit to document her deductions did IRS admit she didn't owe the bill which it tried to intimidate her into paying.

Across the railroad, Fred and Katherine Tomlinson run a one-room Dairy Queen shop. They have never made a lot of money, but enough to rear their children and make their own way. On March 31, 1965, a worried bank cashier ran to see them. "The IRS has seized your bank account," he reported. "They claim you didn't pay your taxes last year." Tomlinson couldn't understand: "The government's never said anything to us about owing any money." That night, he and his wife dug out a canceled check proving they had paid in full, and mailed it to IRS. Meanwhile, checks they previously had written bounced because of the IRS seizure of their funds. "I'm so ashamed," Katherine told her husband. Not until eight days later would IRS restore their money — without the least apology.

This callous disregard of the rights, feelings and welfare of ordinary people goes on all the time. Last March 28, IRS without forewarning attached the salary of Chicago salesman Jerry G. Pfnister. Thus Pfnister was branded as "financially irresponsible" in the eyes of his associates. Only later would IRS give him a letter admitting that it had made an error and he owed nothing. But that has failed to restore Pfnister's reputation.

Conform — Or Else. The attitude that it can do as it pleases sometimes causes IRS to lash out vindictively at people who disagree or cause it trouble, even at its own employes.

Claude F. Salter, for example, is a distinguished veteran of 34 years with IRS. His record as chief of its San Francisco audit division was so outstanding that IRS admits "we cannot deny that he did perform well." Salter was stubborn, though, when it came to principles. To superiors who asked special treatment for certain taxpayers, he consistently said no. So in the spring of 1964, these officials tried to have him declared unfit by ordering him to the U.S. Public Health Service Hospital and sending along a letter implying that he was mentally ill. A battery of psychiatrists and physicians told Salter that he was well adjusted, intelligent and healthy. Nevertheless, IRS soon demoted him to a lesser job where he could not influence policy.

In Dedham, Mass., 31-year-old accountant Donald R. Lord responded to a knock on his front door one Saturday morning, still in his pajamas, and three IRS agents pushed past him into his home. They ordered him to get out corporate records entrusted to him by a local businessman. "You'd better cooperate if you expect to stay in business," Lord was warned. "Don't make any phone calls, or you'll be subject to prosecution."

After interrogating him most of the day, the agents confiscated boxes of papers, threatening him with a jail sentence if he resisted, and drove away.

Soon thereafter, a neighbor phoned: "Some IRS men were here today, asking questions about you." Meanwhile, IRS agents went to Lord's bank and copied his financial records. Others hounded his relatives with interrogations and even tried to question his 88-year-old grandmother.

Angered and worried, Lord engaged a distinguished Boston lawyer, Lawrence O'Donnell. Subsequently IRS, by its own admission, subpoenaed Lord to appear at a conference in a secret office which had been carefully bugged in advance. Suddenly O'Donnell, too, was subjected to hostile IRS examination. An employe at Boston's Carney Hospital, where O'Donnell had undergone five critical operations, tipped him off that IRS was questioning his medical expenses. Moreover, as IRS later admitted, agents pored over his tax returns covering six years, hunting futilely for some error.

The Federal District Court in Bos-

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ton declared that IRS's "unlawful pressures" against Lord came "close to extortion." It ruled the seizure of the business records completely illegal, and forbade IRS to make any further use of them. Yet, as O'Donnell subsequently proved with testimony of one agent who resigned in disgust, IRS made copies of these records and continued to use them—in arrogant contempt of the court order.

A Double Standard. And now, consider undisputed evidence which Sen. John J. Williams (R., Del.) has unveiled on the floor of the Senate. It shows that while mercilessly trying to take the last cent of some taxpayers, IRS has treated others quite differently.

Over a period of seven years, IRS allowed the New York-based real-estate firm of Webb & Knapp to pile up tax debts of more than $27 million, while the Federal Housing Administration lavished on it $67 million in government-insured loans. Upshot? Webb & Knapp defaulted on the loans, and IRS in December 1965 wrote off a whopping $26 million as "uncollectible." Similarly, IRS last year simply wrote off as "uncollectible" a tax bill of more than $23 million owed by six American shipping companies controlled by Greek magnate Stavros Niarchos.

As Senator Williams notes, still harder to explain is the treatment of people like Lawrence L. Callanan. An official of the Steamfitters Local No. 562 in St. Louis, Callanan was convicted in 1954 of extortion, received a 12-year sentence. He was paroled in 1960, and in April 1964 President Johnson commuted his sentence, thereby enabling him to become a union leader again. The same month, IRS settled his unpaid tax debt of $40,219.84 for a token $17,000 plus an agreement that he would pay more if his income rose. "No prospect of any material increase (in income)," said IRS. A few months later, Callanan's union lieutenant, John L. Lawler, handed over $25,000 to "Friends of L.B.J." Next, Callanan, supposedly without money for his taxes, kicked in $2000 to the Democratic National Committee. Then he emerged as director of the lush "voluntary" political fund of Local No. 562, his salary reported at $15,000 to $20,000.

Honest citizens can derive little comfort, too, from the knowledge that IRS has issued a special ruling to reduce the tax that criminals owe on money they steal! Internal Revenue Bulletin No. 1966-42 of October 17, 1966, states: "Embezzled funds will be taken into account if a taxpayer chooses the benefits of the income-averaging provisions." So if a crook gets away with, say, $100,000, it will be okay for him to pay taxes on only $20,000 of stolen money a year over a five-year period.

A Bridle for Bureaucracy. In the face of such outrageous practices, why do we allow IRS power that we would not dare entrust to any other agency? We would never allow police to roam the land grabbing property, confiscating bank accounts, persecuting people at will. If we ever are to start preventing Big Bureaucracy from dehumanizing our lives, the place to begin is with the most powerful bureaucracy of all—the Internal Revenue Service.

Aghast at the discovery that IRS was reading private letters, Congress passed a law in 1965 forbidding it to further rifle the mails. Commissioner Sheldon Cohen has pledged an end to the illegal wiretapping, bugging and other illegalities, promised to purge IRS of the attitude that the taxpayer is the "adversary." Experience shows, though, that no government agency can be trusted to reform itself. Clearly, some reforms from the outside are needed.

Senator Magnuson, joined by 59 other Senators, has proposed the establishment of Small Tax Courts where taxpayers—without hiring a lawyer—could informally present grievances in disputes with IRS involving less than $2500. But, in line with the basic legal principle that a man is innocent until proved guilty, Congress must now make an exhaustive examination of the arbitrary powers which IRS has demonstrated itself unfit to exercise. Before grabbing anyone's salary or bank account, IRS should have to show in court some proof that taxes are owed. Before walking off with all a man owns, IRS should be required to convince a judge that the taxpayer is hiding his money or is about to flee.

It is important for all of us to stop being afraid of IRS. When it acts unfairly, we should speak out.

Let your Congressman know what you think of IRS abuses—and that your vote in 1968 is going to be influenced by what he does to stop them. Moreover, if you have documentary evidence of such abuses, give it to your Congressman or to the Senate investigators.* For only public indignation, backed by facts, will force reforms.

Reforms no doubt will make the work of IRS somewhat more difficult. But in recent years we have chosen, through the courts, to erect a maze of legal procedures to protect the rights of the most depraved and dangerous criminals. It is time we did something about protecting the rights of the honest American taxpayer, too.

*Senate Judiciary Subcommittee on Administrative Practice and Procedure, Room 3214, New Senate Office Building, Washington, D.C. 20510.

Inner-Office Memo

A 70-year-old lawyer was recently visited by a beautiful and buxom blond client. As he closed the door to his private office, he advised his secretary: "If you hear anybody scream, it will be me."

—Robert Sylvester, Chicago Tribune-New York News Syndicate

January 1977

Needed: New Curbs on the IRS

By Robert S. Holzman
with Ann Dear

You may be innocent, but that doesn't always stop the IRS from attaching your salary, seizing your property and damaging your reputation

After more than 30 years as a rancher and lumberman in LaGrande, Ore., Ed McCanse sold his ranch in 1965 and was looking forward to semi-retirement. But following a routine audit, the Internal Revenue Service (IRS) assessed him $119,000 for unpaid taxes on the sale, payable immediately.

Two days before Christmas, IRS officers seized his bank account and lumber-mill stock and slapped a lien on his home. Faced with an IRS threat to sell the stock to pay the taxes, McCanse arranged for the sale himself, but at a fraction of its true value. He paid the assessment and began a three-and-one-half-year struggle to recover the money. In 1969, the IRS admitted it was wrong, refunded the $119,000 plus $24,000 interest and blandly wrote: "We sincerely regret the problems that the McCanses encountered."

McCanse spent three more years and $90,000 in legal fees before he finally made a settlement with his partner, to whom he had been forced to sell his stock. "During this seven-year ordeal, I have worried myself nearly into the grave," says McCanse. "I lost a lifetime of work through a false claim made against me by the IRS."

The McCanse case is a flagrant example of overzealous IRS use of its "jeopardy assessment," one of the harshest of the sweeping powers given it to collect unpaid taxes. As a

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recent year-long study sponsored by the Administrative Conference, an independent federal agency, puts it, IRS officers can "reduce individuals to penury, make them indigent overnight and strip them of all means of supporting their families." They can garnishee wages, put liens on bank accounts, and seize and sell nearly all a delinquent taxpayer's property—in most instances without a court order or hearing.

Despite nearly a decade of criticism, the IRS continues to exercise these powers with little guidance or oversight by Congress or the courts. The Administrative Conference's report, citing inconsistent and almost arbitrary treatment of taxpayers, warned of a "great potential for abuse."

Consider the case of the Reese Brothers of Kelso, Wash. The four-year-old forest-management company had fallen behind in its employes' withholding taxes, but had finally sent the IRS a check for $10,000 covering the overdue taxes, late filing penalties and an advance on the next quarter. Unfortunately, the IRS regional office neglected to inform the local office of the payment.

A swaggering revenue agent chained the door of the Reese office, seized 148 items, including a car which belonged to a third party, and locked up the company payroll for 80 men. Frantic, Willard Reese showed the agent the canceled check. It made no difference. "I'm going to make an example of your business," the agent boasted to Reese's secretary. Reese was forced to hire two attorneys before the IRS told him ten days later that the "whole thing should be forgotten as soon as possible." The "mistake" cost Reese Brothers $875 in legal and other expenses, and as Reese says, "We'll never know how much it really cost in business lost and reputation tarnished."

Many innocent victims of IRS mistakes, however, don't even get a concession of error, much less damages:

▶ In Greenburgh, N.Y., IRS officials mistakenly grabbed William F. Young's office building and warehouse in 1971 to satisfy a lien for taxes actually owed by a previous owner. The government returned the structure six weeks later, badly damaged from flooding during tropical storm Doria. Warned that buildings along the Saw Mill River should be sandbagged because of the approaching storm, IRS officials still took no precautions. Young failed in his suit for $9670 in damages lost for rent, and subsequently received only partial compensation for actual flooding injury. The government successfully argued that its agents were immune from liability for damages occurring during the collection of taxes.

▶ King and Virginia David of Washington, D.C., paid their back income taxes with three cashier's checks. Ten days later, not knowing of the tax payment, the collection chief of the area IRS office seized the $205.85 balance in Mrs. David's checking account, causing several

checks to bounce. Later, he levied on Mrs. David's salary. The Davids protested, and three months later they received a refund check plus interest. But when they sued for defamation of character, the court ruled that the official's action "was within the scope of his authority and in discharge of his official duties."

▶ Contractor Melvin J. Morris, Jr., of Los Angeles, was informed by the IRS that he owed back taxes for deducting too much depreciation on buildings he was renovating in San Francisco. Morris fought the claim, but IRS seized and levied upon his property. Additionally, IRS agents told creditors that Morris was an income-tax deadbeat. Predictably, credit dried up, and he was forced out of business. Two years later, the IRS admitted that Morris owed no taxes and returned $6500 which it had collected through improper seizures. Morris sued for damages. But a federal judge, admitting that the IRS action was "deplorable," ruled against him. The government, he said, cannot be sued without its permission.

No one knows how many improper IRS levies are made. Delinquent taxpayers normally receive four notices of taxes alleged to be due, but forcible collection may strike with devastating suddenness and without notification. Except where a taxpayer's salary is garnisheed, the IRS is not required to notify him of any levy it puts on bank deposits and investment accounts.

Vague guidelines provide that levies should not be used where "undue hardship" would result and until "reasonable efforts" have been made to contact the taxpayer. But the lack of workable definitions of such terms leaves revenue officers free to make decisions almost arbitrarily, the Administrative Conference found. One IRS officer told the Washington *Post* that he had often levied on wages of people who did not know they owed a back tax because the notices had gone to the wrong address.

Rep. James Jones (D., Okla.), who serves on a House subcommittee probing the IRS, has discovered that small taxpayers are far more likely to be targeted for collection efforts than major delinquents. In the Mid-Atlantic region, for instance, IRS officials were unable to explain why no action had been taken for seven months on one case involving unpaid taxes of $1,176,292. In another case, described as "sensitive" by the IRS, inaction by the agency enabled a single taxpayer to pyramid tax liabilities of $1,811,009.

What is to be done?

In 1974, the IRS collection division with its 11,000 employes began a reappraisal of its practices, and is inching toward reform. Individuals, not businesses, who are delinquent for the first time, now can pay their tax bills automatically in monthly installments, if they meet certain qualifications. Another new rule requires supervisors to review any proposed seizure. Yet more than a million levies and liens a year con-

tinue to be virtually unsupervised. Problem-resolution centers have been started as pilot projects in four IRS districts. Ralph Nader's Public Citizen Tax Reform Research Group has recommended legislation requiring such centers in all 58 districts, authorized to stop collection actions for 60 days while a complaint is investigated.

The Tax Reform Act of 1976 now allows taxpayers administrative review as well as quicker judicial review in jeopardy assessments and similar drastic actions. The act also exempts from seizure $50 a week of a worker's salary, plus $15 for each dependent.

Three years ago, the IRS repudiated the use of statistics on the number of cases closed as a criterion for promoting enforcement personnel, a practice which long encouraged revenue officers to close cases by levy or seizure and discouraged arrangements for less drastic settlement. But the situation has not really changed. As Vincent Connery, president of the National Treasury Employees Union, recently testified, "Production goals and quotas are the name of the game. The commissioner banned the present system, but he gave them no other system."

And Philip Vision, a Chicago IRS official who was demoted for refusing to force a revenue officer to seize a business, told a House subcommittee last summer that the "extreme pressure applied by upper IRS management has forced individual revenue officers to bend, circumvent and misapply regulations to satisfy the agency's insatiable hunger for statistics."

The vast majority of American taxpayers pay their taxes on time, and our system of self-assessment and voluntary compliance generally has worked well. But clearly, much remains to be done to protect taxpayers' rights and assure evenhandedness in the IRS's formidable collection procedures. "The IRS must get rid of its bully boys," says Louise Brown, of the independent, Washington-based Tax Reform Research Group. "It must mount a massive retraining program emphasizing respect for taxpayers' rights. Above all, it must devise a way for taxpayers to voice their complaints and get something done about them, without fear of retaliation."

"The Taxpayer's Guide to the IRS," available free of charge from Public Citizen Tax Reform Research Group, 133 C Street S.E., Washington, D.C. 20003, explains in detail how to confer with the IRS and how to arrange to pay tax debts without seizures of wages and property.

For information on reprints of this article, see page 214

When the Viking 1 landed on Mars it took a picture of its own foot. That's the way many of our own vacation snapshots turn out.

— Bill Vaughan in Kansas City Star

January 1969

The Tragic Case of John J. Hafer and the IRS

By John Barron

In preparing two major articles about the Internal Revenue Service, The Reader's Digest has encountered a shocking number of acts of tyranny by our tax-collecting agency. Across the land, IRS has confiscated the money and property of scores of citizens who owed the government nothing. With the help of readers, lawyers, accountants and IRS employes themselves, the Digest has now assembled enough such examples to fill a book.*

Of all the cases examined, however, one stands out as illustration of the agony and injustice that IRS can visit upon an innocent man. We do not maintain that the Hafer case is "typical." Yet we feel an obligation to recount it because it did happen, here in America. We hope that every citizen, every public administrator and every member of Congress will ponder this chronicle, then join in demanding the reforms necessary to ensure that such a thing can never happen again.

*See "Tyranny in the Internal Revenue Service," August '67 issue, and "Time for Reform in the IRS," September '68.

It all began one October morning in 1958. An Internal Revenue Service agent strode into the Cumberland, Md. (pop. 33,500) office of John J. Hafer, just as he might enter any businessman's office, and announced that he wanted to make a routine tax audit. For the next five months, Hafer made all his books and records—plus desk space—available to IRS. The agent worked irregularly, a couple of hours one day, maybe not at all the next. His sporadic audit uncovered no evidence of wrongdoing. Yet, because Hafer's taxable income for 1956 and 1957 was comparatively low, he developed "a feeling" that something was amiss.

Thus, in November 1959, Special Agent Milton Kyhos appeared with orders from regional IRS headquarters to begin an all-out *criminal* investigation. "In over 250 cases,"

Kyhos warned Hafer, "I've never lost one."

"Well, sir," boomed Hafer, "you're about to lose your first."

A tall, powerfully built man with a voice that could rattle windows, John Hafer, 54, felt secure in the knowledge that he had nothing to hide. From German ancestors he had inherited abiding faith in labor, thrift, self-reliance. After working his way through the University of Pennsylvania, he had opened a furniture store in Cumberland and had saved enough to buy a 144-acre farm. There he had established a small dairy and a roadside vegetable stand which grew into a country restaurant. Later, he had taken over a funeral home, expanded it, and acquired still another farm. He kept complete, accurate records, and regularly had them checked by accountant John W. Rollins. Pointing to his books, Hafer said to the IRS investigator, "I hope you'll begin right here in my office."

Kyhos promised he would. But he explained that he would be delayed by other cases for a while.

Ugly Rumors. For the next two years no one from IRS visited, telephoned or even wrote Hafer. Kyhos, though, while investigating around town on other matters, dropped the word that sooner or later he was going to start on John Hafer.

Because these little asides bred ugly rumors, Hafer, in January 1962, called on Kyhos to ask that IRS get on with its investigation and allay suspicions that were being created.

"I would like to take your books," replied Kyhos.

"On one condition," Hafer said. "Don't go up and down the street telling everybody I'm under investigation. It could ruin my business."

"Oh, I couldn't promise that," the agent replied.

Angered, Hafer vowed, "You'll never see my books the longest day you live."

IRS had already examined Hafer's records once, of course, and all of them had long been open for any additional inspection it wished to make. By law, Hafer now had to surrender his corporate books—and he did. But in withholding the personal records he had previously made available, he was within his legal rights.* For this, though, IRS stigmatized him as "uncooperative." And he soon began to learn what can happen to an individual who so incurs IRS wrath.

Now Kyhos did start the investigation, contacting banks, merchants, farmers, even Hafer's church—more than 150 people in all—asking questions which cast their own aura of guilt. Hafer's phone rang often. "Kyhos says you're going to jail, John," salesman James A. Morgan, Jr., reported. IRS prowled around neighboring Pennsylvania and West Virginia, planting doubts about Hafer among creditors and suppliers. The bank called: "Mr. Hafer, we think you ought to know that IRS

*Federal courts have ruled that no one has to supply *personal* records which might be used against him in a criminal investigation.

is copying records of your account." Secretly, the post office was ordered to hand over Hafer's mail before delivery so that IRS could identify and question people who wrote to him. ("Routine for a party that does not cooperate," Kyhos later told a Senate investigating subcommittee.)

IRS dispatched agents in Missouri, Pennsylvania and Texas to hunt down Hafer's married daughters. One of them, Mrs. Frances Wells Ferris, was forced to defend her own tax returns and financial records and was subjected to interrogation at the IRS office in Houston.

The IRS tactics ultimately had their effect. Hafer had long been known as a community leader, an honest, free-speaking man who could be stubborn. "One thing about John, he was never afraid to stand up and be counted," recalls County Commissioner Lucile Roeder. "He was the kind of man a community needs more of." But now belief spread that Hafer must be guilty of *something*. More and more, Hafer's customers, even friends, shied away. Business dwindled. Lenders, once eager to supply operating capital, now found reasons to deny it. Hafer had to sacrifice his dairy business, then a store.

"What can I do?" he asked his wife. "They say all these things behind my back, but they don't make any charges for me to answer." The truth was that IRS had made no charges because, despite efforts spanning nearly four years, it still was unable to build a case.

"You Are Under Arrest." Finally, fuming with anger, on June 1, 1962, Hafer went to IRS headquarters at the post office for a face-to-face talk with Kyhos. When Kyhos saw him entering, he dived under a table, fearful of attack. "Come on out. I'm not going to hurt you," Hafer said. Kyhos hid under the table until a second agent came in; then he jumped up and grabbed a revolver from a file cabinet. "Mr. Hafer, I think you'd better leave," the other agent said. Hafer left.

Seven days later, three IRS agents crowded into his office. "Mr. Hafer," one announced, "you are under arrest for assaulting a federal agent." Incredulous, Hafer was hauled away to the police station, fingerprinted, photographed and held prisoner until his brother-in-law put up $5000 bond.

Now Hafer recognized that he *was* in trouble. He could be imprisoned for three years. "John, you'd better hire a good criminal lawyer," an attorney friend advised.

At the assault trial in Federal District Court in Baltimore, which began on September 10, 1962, the government conjured up a scene of mayhem and portrayed Hafer as a wild man "bent on murder." Nevertheless, one fact could not be erased: by Kyhos' own admission, no one had so much as touched him. After a three-day trial, the jury returned the verdict: "Not guilty."

"It's all over now," Hafer said to his family. But it wasn't. IRS had ordered still another agent to Cum-

berland to intensify the pursuit of Hafer. And, in November 1962, four years after the audit began, Kyhos officially recommended that Hafer be prosecuted for criminal tax fraud.

A Matter of Routine. IRS boasts that its system of internal checks and balances protects every taxpayer against malicious or groundless charges by an individual agent or service clique. Kyhos' report, for example, had to be studied and approved first by his group supervisor; then by the IRS intelligence chief in Baltimore; next by the IRS Assistant Regional Commissioner for Intelligence; and finally by the IRS Regional Counsel's office in Philadelphia. Yet not one of these supposed checks wrought any change. The grave recommendation that Hafer be charged as a criminal was approved swiftly and routinely all the way up the line.

IRS then asked the Justice Department to try to put Hafer in jail. The case was assigned to U.S. Attorney Joseph D. Tydings (now U.S. Senator from Maryland) for prosecution. After examining it, Tydings refused to prosecute. "I strongly advised the Justice Department to drop the case," he recalls. Concerned, Justice Department officials conferred with Hafer in Washington. Then they, too, rejected the charges and refused to prosecute.

Yet IRS wouldn't give up. It switched the charges from criminal fraud to civil fraud, which its own lawyers are empowered to prosecute. On July 31, 1963, IRS officially ruled that Hafer owed $34,463.12 in back taxes and fraud penalties.

Now, for the first time, Hafer received a detailed bill of particulars. "Why, they've made up these charges out of thin air!" exclaimed his son, John, Jr., as he studied the computations. To make its case, IRS simply had disallowed legitimate, documented business expenses. Also, without offering any evidence, it had claimed that Hafer must have spent $15,000 more on living expenses than his tax returns indicated.

Hafer submitted a detailed analysis, pinpointing each fallacy in the IRS claims. To no avail. His son traveled to the district IRS office in Baltimore with the evidence—without success. He drove several times to the regional office in Philadelphia. Still IRS wouldn't budge. The series of safeguards which, IRS claims, guarantee fair treatment to all taxpayers simply did not function. An IRS decision had been made, and apparently nobody dared be the one who found it wrong.

A Day in Court. His business a shambles, Hafer now lived for what he had demanded—a hearing before the U.S. Tax Court in Philadelphia. It was scheduled for March 21, 1966. Meanwhile, he talked little and enjoyed nothing, so obsessed had he become with thoughts of exoneration. But now, as time for the trial neared, it became evident that IRS was anxious to duck a showdown in open court. On February 18, Hafer's tax lawyer, Frank S. Deming, phoned Hafer: "The IRS says that if you will admit fraud, they'll settle the whole case for $4000."

"Admit that I'm a crook when I'm not?" Hafer replied. "No, sir!"

Soon Deming telephoned again: "IRS is willing to settle for $3000."

"I don't owe a cent!" Hafer shouted. "If I give in now, no one will *ever* believe I'm innocent."

In the pre-dawn darkness of March 21, 1966, Hafer and his son drove from Cumberland to Philadelphia. When the Tax Court opened, they were there, surrounded by books and ledgers, ready to fight. Then they saw Deming hurrying toward them.

"Mr. Hafer! IRS here has decided to recommend that the whole case be dropped!" the lawyer jubilantly told them. "Washington has to approve, but I'm told that this will take only a short time. All you have to do is agree not to go to trial now."

Hafer hesitated, feeling that IRS might only be stalling. But finally he agreed. The ordeal that had consumed nearly eight years of his life seemingly had ended.

Only one minor problem remained. Hafer had consented to appear before a Senate judiciary subcommittee investigating IRS abuses. His lawyer and friends urged him not to testify lest he further anger IRS. "No," he said. "Maybe if others hadn't been afraid to speak out, this wouldn't have happened to us."

So Hafer told his story to the Senators. "My sole purpose in appearing here is to try to save other taxpayers from this awful experience," he said. "But for my belief in a living God who gave me good health, guidance and perseverance, I would have succumbed."

Back home, Hafer waited impatiently for official notice that IRS had formally dropped the case. But no word came. Then, on May 17, through Deming, Hafer learned the truth: IRS in Philadelphia had dishonored its pledge and decided to renew the case. Hafer had been duped. Now he had to go through the agony of waiting indefinitely until the trial could be rescheduled.

"Ordered and Decided." Meanwhile, within IRS, an honorable man was wrestling with his conscience. He was Edward L. Newberger, the senior IRS attorney ordered to prosecute Hafer. As an outstanding tax specialist and trial lawyer, Newberger had doubted the government charges when he first scrutinized them in preparation for trial. "Our figures for living expenses are just unsupported estimates," he argued. "We don't have a case at all." And it was at his insistence that IRS had pledged to drop the case.

He knew that he now had much to lose personally by protesting further. In effect, he would be declaring that all IRS officials who had endorsed the prosecution of Hafer were wrong. Yet his conscience left him no choice. So he drafted a 34-page memorandum which ripped the government case to shreds. It asserted that the government claims were based on erroneous figures and

unsubstantiated estimates. Finally, Newberger cited the findings of a crack IRS agent whom he had asked to make an objective study of Hafer's records. The analysis had disclosed that the books and records were complete and agreed with the tax returns. Then he went from IRS office to office showing the memorandum and arguing for justice.

Hafer, of course, knew nothing about this. As the memorandum was slowly shuffled up the line to Washington, he received notification that his trial had been rescheduled for the term beginning December 5, 1966. Wearily he began preparing all over again for a court fight. But, on the night of November 1, while getting dressed for a Lions Club dinner, he collapsed in uncontrollable convulsions. He was rushed to a Baltimore hospital. Surgery disclosed a malignant brain tumor. Hafer's power of speech waned, and he grew weaker by the day.

John, Jr., assembled the family. "Whatever we do," he said, "we can't let anyone know just how sick Dad is. If IRS finds out, it will drag the case on, and he may never be cleared." So, as far as IRS knew, Hafer was as prepared as ever to meet it in court on Monday, December 5.

IRS in Washington waited until the last possible minute. Then, on Friday afternoon, December 2, Deming telephoned John Hafer, Jr., from Philadelphia. "Your dad's vindicated!" he said. "Washington just called IRS here. They're dropping the case once and for all."

"Get it in writing," the son said. "Otherwise, we'll see them in court."

A copy of the final decree of the U.S. Tax Court arrived three weeks later. It read: "ORDERED AND DECREED: *That there are no deficiencies in income taxes due. . .*"

The son sat at John Hafer's bedside praying that his father would regain consciousness. Seeing his father's eyes move, he said, "Dad, you've won! IRS has admitted in writing that you're not guilty of anything, that you don't owe anything. Can you hear me, Dad?"

Tears welled in Hafer's eyes, and he reached out to touch his son's hand. Soon he lapsed into a coma. Five days later, without comprehending another word, John Hafer died.

At IRS headquarters in Washington, two Reader's Digest editors reviewed this case in detail with three senior officials of the agency. After every fact had been confirmed, IRS was asked to comment on how it all could have happened.

The IRS reply came a month later: "Mr. Hafer refused to cooperate. In our opinion, the system of checks and balances . . . was not at fault. Rather, the system was frustrated by Mr. Hafer's attitude . . .; nor indeed can we contemplate manageable means to prevent such persons from martyring themselves."

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TAXATION WITHOUT DISCRIMINATION (TWD)
STATEMENT OF FORTESCUE W. HOPKINS, DIRECTOR

THE TAXPAYERS BILL OF RIGHTS

Sect. 1. The sixteenth article of amendment to the Constitution of the United States is hereby repealed.

Sect. 2. The first clause of Sect.6. of Article I of the Constitution of the United States is hereby repealed.

Sect. 3. The fourth clause of Sect. 9 of Article I of the Constitution of the United States is hereby repealed.

Sect. 4. The Congress shall have the power to lay taxes on the net incomes of individuals which shall be deemed to include the proportionate share of the net income or loss of any entity in which an individual has an equity interest. The net incomes of individuals and of any such entity is defined to include the receipt of anything of value from any source,whatsoever, less cost or expenses related to the value received and less a carryover of any net loss from a prior tax period.

Sect. 5. For purposes of this article, "individuals" are defined to include all United States citizens and all non-citizens who have been residents of the United States for at least six months.

Sect. 6. Except for the tax provided in Sect. 4 of this article, the power to enact,lay or collect any internal tax or insurance payment of any kind or description is hereby prohibited to the United States.

Sect. 7. Congress shall have the power to lay and collect import duties and shall have the power to enforce this Section by appropriate legislation.

Sect. 8. Congress shall have the power to enforce Sections 1 through 6 of this article by appropriate legislation,provided, however:

A. The President of the United States shall have a line-item veto power with respect to any such legislation.

B.Congress shall enact no such legislation that is, in the slightest degree, discriminatory or intended to achieve a non-revenue related objective, whether or not such discrimination or objective is authorized under any provision of this Constitution.

C. There shall be no tax on estimated incomes and no witheldig of tax or requirement of information returns from any source whatsoever.

D. Any legislation adopted pursuant to this article shall become effective on the January first following the date that such legislation becomes final and no earlier shall such rule or regulation take effect.

E. The term "circuit or province of Canada" contained in Section 4.above, shall be interpreted as meaning, as possible, and if that include, the equivalent the unit of jurisdiction which is in substantial accordance to the jurisdiction of the courts of the United States of America, that the rule of international and civil law should be an individual who is under the age of 21. Shall not be taken to be a "circuit or province or rules" to that jurisdiction.

F.The tax "court income".provided for in Section 4.above, shall be a flat rate percentage of such individual's net income.There will be no credit permitted to an offset against this tax and exempt for Section 2 (E).above. There will be no eliminate or exclusion allowed in determining "net income".that would be the taxable amount in determining.The flat rate for each equal to the average individual rate. First shall be the same for all individuals and shall be determined by the President on or before October 15 of the preceding year. The rate applied shall be attributed to income received during the year on which such income shall be based. Foreign withholding taxes and credits, to the extent that the United States authorized to be withheld and credited for the year in which the data is being presented. The Congress will have the date which which to extent the rate determined by the President and to set a new alternate rate. This rate and increasing formula, which be based on at least a twenty-year rate of data because of changing. However, the President may, within two years, submit recommendations to the Supreme Court of the Appeals, and will then give the permission a higher rate in a proceeding in which the Supreme Court of the Appeals will take notice and consideration.

G.Military. Notification to settle and delivery of the information of the state in the same and information shall be of the State of an individual's residence with respect to the date of the income of any transportation income. Shall be taxed in the manner will apply to any income authorized to not include under with respect and from any such employment of such income shall be the period of the income of the Supreme Court of the United States. Shall be the period of the income of the Supreme Court of the United States. Shall be the period of the income of the Supreme Court of the United States.

Sect. 9. The State, District or Territory wherein the individual is a resident as of the end of any tax period shall,subject to the provisions of this article, solicit,determine,adjust,collect and enforce the tax provided for under Sect. 4 of this article and shall remit such taxes to the United States on or before the first day of the month subsequent to the month after the month of receipt, thereof, without charge or cost to the United States,provided,however, that each State may adopt an annual or quarterly tax period, and, further provided, the President of the United States may , at any time, question the tax procedures of any State, and if disputes can not be resolved , the Supreme Court of Tax Appeals shall have original jurisdiction to hear the dispute and issue such orders adjusting the State's tax procedures , as may be necessary, to insure that the Tax procedure of any State does not unreasonably or unfairly affect the Federal Tax,but in making its decision, the Supreme Court of Tax Appeals will not insist upon or attempt to require that the Tax Procedures of all States be comparable to each other.It will act to correct only an obvious abuse that is unfair or unreasonable and the burden of proof, thereof,will be upon the United States..(Note: this proposal is not new or unusual.. In a somewhat different form it was initially proposed by Patrick Henry and George Mason as a Constitutional Amendment in 1788 with the difference that if a State failed to meet a Federal Tax Requisition, then the US could exercise the power of "Direct Taxation".)

Sect. 10. No State,District or Territory of the United States or any political subdivision,thereof, shall have the power to lay and collect an income tax unless it is a flat rate percentage of the "net income" determined under Sect. 4 of this article.

Sect. 11. The Supreme Court of Tax Appeals shall have original jurisdiction to settle any dispute between the United States and a State arising under this article and may compel specific compliance with any other section of this article by fines for contempt or as it may otherwise determine.

Sect. 12. This article shall become effective on the January first following the date of its ratification as an amendment to the Constitution by the Legislatures of three-fourths of the several States.

Respectfully submitted,
TAXATION WITHOUT DISCRIMINATION*
By Fortescue W. Hopkins, Director

*A Virginia Non-Profit,Non-Stock Corporation
[illegible]
New Castle, [illegible]
[illegible]
[illegible]

FOR THE RECORD OF THE HEARING ON THE TAXPAYERS BILL OF RIGHTS APRIL 10, 1987

In 1980 I worked for a company. I recieved a normal W-2 and filed a normal Tax Return. During the following year, the company changed it's accounting methods and sent an additional W-2 for $1200. The did not send me a copy, only the IRS. Two years later I received notice from IRS that I was a tax evader and had not reported income. As I had never in 30 years had a tax problem, and had always filed and reported every dollar in income, I did not understand. I contacted IRS for clarification and a copy of the alleged W-2. My request was treated as if I had questioned the very foundation of the country and was told that because I had the audacity to question them, that I was going to be audited (and punished). It took the IRS two years to finally show me the W-2 in question, and that was a manually typed one with only my name. It did not contain my Social Security number nor my address. I was told that the company in question, Blue Cross/Blue Shield of Delaware couldn't find it for that long.

When I recieved notice that I was to be audited, I contacted the local office and made an appointment and appeared. The first words from the auditor was that it was people like me, tax cheats, who were ruining the country. I knew that this was going to be a horrendous experience and asked to see the woman's superior. Five minutes later I was told that the audit was over and every deduction for the two years which I had on my returns were being disallowed. I appealed the decision and finally asked to go to Tax Court. I met with the local Counsel in preparation for going to court. Their attitude and advice was that I agree to all of their allegations, which I refused to do. They would not discuss or negotiate my situation, as ordered by the Judge. I guess that they had to show the court that they tried, because five minutes before the hearing, in the corridor they said that if I agreed with them to reducing the amount of money they claimed, from $10,000 to $5,000, they would sign off on the case. I had become so disheartened and weary by that time, that I agreed.

But that was not the end of it. A few weeks later I was notified that yet another year was being audited. I contacted the auditor and arranged to submit, in advance of a personal meeting, copies of all the information that the auditor wanted. When I went to the IRS office for the audit, there was another person in the room. A Mr. Ed Garcia introduced himself as the auditors supervisor and would just sit quietly in the corner and watch the audit as part of the auditor's evaluation. I did not object. As soon as we started, Mr. Garcia had a nasty comment or accusation to make about everything I said. I reminded him that he said he would say nothing and that he was distracting me and the auditor. He then told me and the auditor that he would take over. He asked for a particular document. The auditor and I both told him that a copy was in the pile on the desk and we could find it. He said that he wanted the copy I had at home and that I should immediately drive home and get it.

I refused, as the copy there was perfect and there was no sense to his order. He told me that he could do anything he wanted to because he had the power and that my refusal would be costly. The auditor seemed upset with this and I was stunned. Mr. Garcia then said that the audit was over and I left.

At the time of this audit, an executive of the organization for which I worked was under Federal investigation. I add this because it becomes pertinent.

Two days later, I was sitting in my office when two men walked in unannounced and said that I had violated Federal law in that I had threatened a Federal employee and that I was facing a possible long jail term for threatening Mr. Garcia. At first I was shocked, then I realized that this was the way that he was going to punish me for questioning his absolute power. I became irate and told the two T-Men to either arrest me or to get the hell out of my office before I had them for armed assault and harassment. I guess that they knew that they really were wrong and should not be there as they left immediately. I contacted Senator Dixon, of Illinois and although his staff said that they were just as afraid of IRS as anyone, that they would look into it. A while later I received a copy of a letter from the U. S. Attorney for this district which stated that there was nothing on file which should have caused the T-Men to go to my office and that there was nothing on the record even acknowledging that this had happened.

The T-Men had wandered throughout the building in which I worked and had flashed their badges at everyone. Because of the sensitivity engendered by the investigation of someone else in the organization I worked for, and although I had recieved superior reviews of my work, within a week of the visit by the T-Men, I was asked to submit my resignation. Garcia had certainly shown his power, he cost me my job.

After four years of being harassed and haunted by the IRS, and more fully understanding what my people had gone through during the Holocaust, I ran out of strength, patience and money. I suffered a number of hospitalizations for stress related heart problems. I just agreed with anything that IRS wanted. I went to the local office to work out a payment plan in 1986. It took arguing and pleading to get them to accept monthly payments of less than 100 percent of my income. I have made 7 payments of $775 each, 40% of my takehome pay. I have to get permission from the IRS to see a dentist, or else I can't afford it. To top everything else off, the statements I get as I make my payments have been in error and I finally know what I am being credited with.

A final point, but one which is most important. You, the Congress have exempted the IRS from all of the basic usury laws which the rest of the country enforces and for which you or I would be prosecuted.

1. The IRS charges interest on the taxes owed.
2. The IRS charges interest on the penalty on the taxes owed.
3. The IRS charges interest on the interest on the taxes owed.
4. The IRS applies payments made on taxes owed in the manner to keep the actual amount owed at the highest. Kind of like the old company store.

I hope that you in Congress have the intestinal fortitude and the motivation to carry your task through and reform this blot on the republic in which we live. I would not even compare the Internal Revenue Service to the KGB or the Gestapo. Those organizations ultimately had to answer to their governments and leaders for their actions. The IRS, which causes similar fears in, and cause as serious harm to, the citizens of this country, also seem to strike fear in the hearts of the leaders of this country.

I am 100 percent behind your effort and I have hopes that you will make America a better place to live by curbing this monster.

Martin Wild

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